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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1930

No. 470

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, APPELLANT,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA AND LEON O. WHITSELL, C. L. SEAVEY, ET AL., ETC.

No. 471

LOS ANGELES & SALT LAKE RAILROAD COMPANY, APPELLANT,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA AND LEON O. WHITSELL, C. L. SEAVEY, ET AL., ETC.

No. 472

SOUTHERN PACIFIC COMPANY AND SOUTHERN PACIFIC RAILROAD COMPANY, APPELLANTS,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA AND LEON O. WHITSELL, C. L. SEAVEY, ET AL., ETC.

APPEALS FROM THE SUPREME COURT OF THE STATE OF CALIFORNIA

FILED SEPTEMBER 22, 1930

(35,892, 35,893, 35,894)

(35,392, 35,393, 35,394)

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IN SUPREME COURT OF CALIFORNIA.

S. F. No. 13056

ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a Corporation, Petitioner,

v.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA and LEON O. Whitsell, C. L. Seavey, Ezra W. Decoto, Thomas S. Louttit, and W. J. Carr, as Members of and Constituting said Railroad Commission, Respondents

S. F. No. 13057

LOS ANGELES & SALT LAKE RAILROAD COMPANY, a Corporation, Petitioner,

v.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and LEON O. Whitsell, C. L. Seavey, Ezra W. Decoto, Thomas S. Louttit, and W. J. Carr, as Members of and Constituting said Railroad Commission, Respondents

S. F. No. 13058

SOUTHERN PACIFIC COMPANY (A Corporation) and Southern Pacific Railroad Company (A Corporation), Petitioners,

v.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA and LEON O. Whitsell, C. L. Seavey, Ezra W. Decoto, Thomas S. Louttit, and W. J. Carr, as Members of and Constituting said Railroad Commission, Respondents

[fol. 2] JOINT PRÆCIPE FOR TRANSCRIPT OF RECORD AND ORDER THEREON

To the Clerk of the above-entitled Court:

The parties above named in the above entitled causes join in this Præcipe and Stipulation for the preparation of the

transcript of the consolidated record on appeal in said causes and you are requested to prepare a transcript of record in said causes and transmit same to the Supreme Court of the United States at Washington, D. C., duly certified and authenticated and within the time prescribed by the rules of practice of the Supreme Court of the United States, consisting of the following documents and portions of the record in said causes which said parties stipulate constitute the record on appeal to the Supreme Court of the United States in said causes:

1. This Præcipe and Stipulation.

2. Complaint of Central Development Association of Los Angeles, Case No. 971, against the Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company and San Pedro and Salt Lake Railroad Company, filed with the Railroad Commission July 6, 1916.

3. Answer of Atchison, Topeka & Santa Fe Railway Company to complaint of Central Development Association of Los Angeles, Case 971, filed with the Railroad Commission July 29, 1916.

4. Answer of Southern Pacific Company to complaint of Central Development Association of Los Angeles, Case 971, filed with the Railroad Commission August 7, 1916.

5. Answer of Los Angeles and Salt Lake Railroad Company to complaint of Central Development Association of Los Angeles, Case 971, filed with the Railroad Commission July 28, 1916.

6. Amendment to complaint of Central Development Association of Los Angeles, Case 971, filed with the Railroad Commission June 28, 1918.

[fol. 3] 7. Answer of Atchison, Topeka & Santa Fe Railway Company to amendment to complaint in Case 971, filed with the Railroad Commission July 5, 1918.

8. Answer of Southern Pacific Company to amend- to complaint in Case 971, filed with the Railroad Commission July 26, 1918.

9. Answer of Los Angeles and Salt Lake Railroad Company to amendment to complaint in Case 971, filed with the Railroad Commission July 17, 1918.

10. Decision of the Railroad Commission, No. 8901, rendered April 26, 1921.

11. Decision of the Railroad Commission of California, No. 9838, rendered December 6, 1921.

12. Decision of the Supreme Court of the State of California, rendered on the 19th day of December 1922, annulling the decisions No. 8901, and No. 9838 of the Railroad Commission of the State of California.

13. Order of the Railroad Commission of the State of California, rendered on the 3rd of October, 1925, reopening Cases Nos. 970, 972, 974, 980, 981, 983 and Application No. 3346, for further consideration and further hearing before the Railroad Commission of the State of California.

14. Petition of Central Development Association of Los Angeles, for reopening of Case 971, filed with the Railroad Commission September 18, 1925.

15. Order of Railroad Commission reopening Case 971 for further proceedings, dated October 3, 1925.

16. Decision of the Railroad Commission of the State of California No. 18593, rendered July 8, 1927.

17. Application of Southern Pacific Company for rehearing on Decision 18593, filed with the Railroad Commission July 16, 1927.

[fol. 4] 18. Application of Los Angeles and Salt Lake Railroad Company for rehearing on Decision 18593, filed with the Railroad Commission July 16, 1927.

19. Application of the Atchison, Topeka & Santa Fe Railway Company for rehearing on Decision 18593, filed with the Railroad Commission on July 21, 1927.

(NOTE.—The foregoing three applications for rehearing (Items 17, 18 and 19) are quoted in full in petitions for writs of review, Items 22, 23 and 24, following, and, therefore, instead of copying said applications the Clerk may certify that said applications are on file and that copies are omitted because said applications are quoted in full in petitions for writs of review which are set out in the certified record.)

20. Decision of the Interstate Commerce Commission in Docket No. 14778 and Finance Docket 3556, decided May 8, 1928, filed with the Railroad Commission May 25, 1928. Filed by California Railroad Commission without prior notice to the carriers of said filing.

21. Order of the Railroad Commission of the State of California No. 19810, denying applications for rehearing, dated May 26, 1928.

22. Petition of Southern Pacific Company and Southern Pacific Railroad Company for a writ of review, filed in the Supreme Court of the State of California on the 19th day of June, 1928 (omitting exhibits).

23. Petition of Atchison, Topeka & Santa Fe Railway Company for a writ of review, filed in the Supreme Court of the State of California on the 19th day of June, 1928, (omitting exhibits).

24. Petition of Los Angeles and Salt Lake Railroad Company for a writ of review, filed in the Supreme Court of the State of California on the 19th day of June, 1928, (omitting exhibits).

25. Writ of review issued out of the Supreme Court of [fol. 5] the State of California upon petition of Southern Pacific Company, et al, dated July 7, 1928.

26. Writ of review issued out of the Supreme Court of the State of California upon petition of Atchison, Topeka & Santa Fe Railway Company, dated July 7, 1928.

27. Writ of review issued out of the Supreme Court of the State of California upon petition of Los Angeles and Salt Lake Railroad Company, dated July 7, 1928.

(NOTE.—Writs of review issued out of the Supreme Court of the State of California upon petition of Atchison, Topeka & Santa Fe Railway Company and upon petition of Los Angeles and Salt Lake Railroad Company, Items 26 and 27, are substantially identical as to form and substance as the writ of review issued upon petition of Southern Pacific Co., et al. Item 25, and may therefore be omitted in printing and reference made thereto by suitable notation.)

28. Return of Railfoad Commission of the State of California to writs of review issued upon petition of Southern Pacific Company and Southern Pacific Railroad Company, No. S. F. 13,058; writ of review issued upon petition of Atchison, Topeka & Santa Fe Railway Company, S. F. 13,056; and writ of review issued upon petition of Los Angeles & Salt Lake Railroad Company, No. S. F. 13057, the said return being filed with the Supreme Court of the State of California August 6, 1928. (Omitting pleadings, transcripts and exhibits and attached Memorandum of Documents filed with the said court.)

29. Minute order of the Supreme Court of the State of California dated August 6, 1928, showing consolidation for hearing and decision of Southern Pacific Company, et al. v. Railroad Commission et al., S. F. No. 13058; The Atchison, Topeka & Santa Fe Railway Co. v. Railroad Commission, S. F. No. 13056; and Los Angeles and Salt Lake Railroad Company v. Railroad Commission, S. F. No. 13057.

30. Decision of Supreme Court of the State of Califor-
[fol. 6] nia, rendered May 27, 1930, affirming the order of the Railroad Commission of the State of California.

31. Joint petition for rehearing filed by Southern Pacific Company, Southern Pacific Railroad Company, The Atchison, Topeka & Santa Fe Railway Company and Los Angeles and Salt Lake Railroad Company in the Supreme Court of the State of California, filed June 16, 1930.

32. Order of the Supreme Court of the State of California, filed on the 26th day of June, 1930, denying the joint petition of Southern Pacific Company, Southern Pacific Railroad Company, The Atchison, Tokepa & Santa Fe Railway Company and Los Angeles and Salt Lake Railroad Company for rehearing.

33. Remittitur issued out of the Supreme Court of the State of California, dated June 27, 1930, in Atchison, Topeka & Santa Fe Railway Company v. Railroad Commission of the State of California, et al., S. F. No. 13056.

34. Remittitur issued out of the Supreme Court of the State of California, dated June 27, 1930, in Los Angeles and Salt Lake Railroad Company v. Railroad Commission of the State of California, et al., S. F. No. 13057.

35. Remittitur issued out of the Supreme Court of the State of California, dated June 27, 1930, in Southern Pacific Company, et al. v. Railroad Commission of the State of California, et al., S. F. No. 13058.

(NOTE.—Remittitur in each of the three foregoing cases specified in Items 33, 34 and 35 are substantially identical and therefore Items 34 and 35 may be omitted in printing and suitable reference made thereto by notation.)

36. Petition for Appeal by Atchison, Topeka & Santa Fe Railway Company, S. F. No. 13056.

37. Petition for Appeal by Los Angeles and Salt Lake Railroad Company, S. F. No. 13057.

[fol. 7] 38. Petition for Appeal by Southern Pacific Company, et al., S. F. No. 13058.

39. Assignment of errors by The Atchison, Topeka & Santa Fe Railway Company, S. F. No. 13056.

40. Assignment of errors by Los Angeles and Salt Lake Railroad Company, S. F. No. 13057.

41. Assignment of errors by Southern Pacific Company, et al., S. F. No. 13058.

(NOTE.—Each of the assignments of errors, Items 39, 40 and 41 is substantially identical, with the exception of paragraph XX thereof, and assignments of errors 40 and 41 may be omitted in printing, with exception of paragraph XX thereof, which should be included and printed in the record.)

42. Order allowing appeal by The Atchison, Topeka & Santa Fe Railway Company, S. F. No. 13056.

43. Order allowing appeal by Los Angeles and Salt Lake Railroad Company, S. F. No. 13057.

44. Order allowing appeal by Southern Pacific Company, et al. S. F. No. 13058.

45. Citation, with proof of service and all endorsements thereon, by The Atchison, Topeka & Santa Fe Railway Company, S. F. No. 13056.

46. Citation, with proof of service and all endorsements thereon, by Los Angeles and Salt Lake Railroad Company, S. F. No. 13057.

47. Citation, with proof of service and all endorsements thereon, by Southern Pacific Company, et al., S. F. No. 13058.

(NOTE.—Petitions for appeal specified in Items 36, 37, 38; Orders allowing appeal specified in Items 42, 43 and 44; Citations, etc., specified in Items 45, 46 and 47, are respectively substantially identical and therefore Items 37 and 38; 43 and 44; 46 and 47, may be omitted in printing and suitable reference made thereto by notation.)

48. Supersedeas Bond on Appeal, by The Atchison, [fol. 8] Topeka & Santa Fe Railway Company, S. F. No. 13056.

49. Supersedeas Bond on Appeal, by Los Angeles and Salt Lake Railroad Company, S. F. No. 13057.

50. Supersedeas Bond on Appeal, by Southern Pacific Company et al., S. F. No. 13058.

(NOTE.—Supersedeas Bonds on Appeal—Items 48, 49, 50—may be omitted in printing by making suitable reference thereto.)

51. Agreed Condensed Statement of Evidence and Stipulation.

52. Stipulation and Order of August 18, 1930, extending time to docket cause and file record on appeal.

53. The Certificate of the Clerk of the Supreme Court of the State of California.

54. Certify separately and forward to the Clerk of the United States Supreme Court the following "Original Exhibits":

(a) California Railroad Commission Exhibit No. 1, entitled "Railroad Commission Grade Crossing and Terminal Investigation Los Angeles", filed February 17, 1920.

(b) City of Los Angeles Exhibit 5, being a certified copy of decision of the Interstate Commerce Commission in

Docket No. 14778 and Finance Docket 3556 and 3569 decided July 6, 1925.

(c) California Railroad Commission Exhibit No. 49, filed March 4, 1926.

(d) City of Los Angeles Exhibit No. 13 entitled: "Major Traffic Street Plan, Los Angeles, California", filed with the Railroad Commission May 21, 1926.

(e) City of Los Angeles Exhibit No. 14, entitled: "Existing Major Thoroughfares Serving Administrative Center Site", filed with the Railroad Commission May 21, 1926.

(f) City of Los Angeles Exhibit No. 15, entitled: "Administrative Center District and Adjoining Areas", filed with the Railroad Commission May 21, 1926.

[fol. 9] (g) City of Los Angeles Exhibit No. 16, entitled: "Metropolitan Mosaic Greater Los Angeles", filed with the Railroad Commission May 21, 1926.

(h) Carrier's Exhibit No. 36 entitled: "Proposed train movement in and out of station, joint passenger terminal Los Angeles & Salt Lake Railroad and Southern Pacific, March 1926", filed with the Railroad Commission May 26, 1926.

(i) Carrier's Exhibit 80 entitled: "Los Angeles Union Passenger Terminal proposed by the California Railroad Commission in the City of Los Angeles", filed with the Railroad Commission August 4, 1926.

(j) Carriers' Exhibit 88, entitled: "Estimate Los Angeles and Salt Lake Railway Company and Southern Pacific Company Joint Passenger Terminal Facilities", filed with the Railroad Commission August 5, 1926.

Dated September 12, 1930.

Robert Brennan, E. W. Camp, A. S. Halsted, Frank Karr, C. W. Durbrow, Attorneys for Petitioners and Appellants. Arthur T. George, Ira H. Rowell, Roderick B. Cassidy, Attorneys for Respondents and Appellees.

[fol. 10] ORDER

It being the opinion of the Chief Justice of the Supreme Court of the State of California that it is necessary and

proper that the original maps and blue prints and certain exhibits specified in the foregoing Joint Præcipe for transcript of record be inspected in the Supreme Court of the United States on appeal, it is therefore hereby ordered that the clerk deliver such original maps and blue prints and exhibits to said Supreme Court of the United States for filing with the record in this case in connection with the transcript of proceedings therein and that after such inspection by the Supreme Court of the United States said original maps, blue prints and exhibits be returned to the Clerk of the Supreme Court of the State of California.

Dated September 12, 1930.

William H. Waste, Chief Justice of the Supreme Court of the State of California.

[fol. 11] Filed at Los Angeles Office 7/3/16

[File endorsement omitted]

BEFORE RAILROAD COMMISSION OF CALIFORNIA

Case No. 971

THE CENTRAL DEVELOPMENT ASSOCIATION OF LOS ANGELES, a Voluntary Organization of the Citizens of the City of Los Angeles, State of California, Complainant,

vs.

THE SOUTHERN PACIFIC COMPANY, ATCHISCO, TOPEKA AND Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, Defendants

COMPLAINT—Filed July 6, 1916

The Complainant respectfully shows:

I

That the Central Development Association of Los Angeles is a voluntary organization having a membership of citizens of the City of Los Angeles, who have organized themselves for the purpose of considering matters of public importance to the city of Los Angeles and its inhabitants and of securing necessary and appropriate action upon such matters.

II

That the citizens and residents of the city of Los Angeles and of territory surrounding it and tributary to it are profoundly affected by the existence within the limits of the said city of many crossings at grade of the streets of said city by lines of steam and electric railways and the use of many of the streets of said city by such lines of railway as will more fully appear hereafter. That in order to investigate and arrive at an intelligent understanding of the matters set forth in this complaint the Complainant, through engineers and experts of recognized ability, has prosecuted a careful investigation of crossings at grade and the use of the streets of the city of Los Angeles by the railroad lines of the defendants above named, and that the results of the investigation so conducted by the complainant, stated in general terms, are as follows:

[fol. 12] The city of Los Angeles is a community having within its boundaries a population of about 600,000 and it is surrounded by numerous smaller towns and cities having populations of from a few hundred to forty or fifty thousand each, and also annually entertains many hundreds of thousands of visitors and tourists.

That the city of Los Angeles is crossed from North to South by the trunk lines of three transcontinental railroads—the defendands above named; that these three defendants maintain within the City of Los Angeles three separate, main passenger stations and three separate principal freight stations and other subsidiary passenger and freight stations, and separate yards consisting of great area of tracks where freight and passenger trains are made up.

That the Pacific Electric Railway Company maintains at two different points within the business district of the city of Los Angeles separate passenger stations for the use and service of its interurban trains and these interurban trains, to the number of more than two thousand each day, enter and leave the city of Los Angeles over various routes, crossing certain of the steam railroad lines of the above named defendants.

That the entrance and crossing of the city by the lines and tracks operated by defendants have resulted in the crossing of the streets of the city of Los Angeles by their

lines at grade in a very great number of different places, and that several streets of said city, and notably Alameda Street, a main artery, and Alhambra Avenue, an important street, are occupied longitudely by the lines of one of the defendants.

That many of the grade crossings herein referred to are upon streets that are main arteries of traffic to and from the business center of the city of Los Angeles, and its suburbs and along which many thousands of vehicles and great numbers of pedestrians pass each twenty-four hours. [fol. 13] That the crossing of the streets of the city at grade by the tracks of the above named defendants has in the past been productive of many accidents which have been destructive of the lives and property of the people of the city of Los Angeles and of visitors to said city.

That an important and populous part of the Eastern area of said city, known as Boyle Heights, and East Los Angeles, are separated from the remainder of the city by the main tracks of the above named defendants and the intercommunication between this area to the business portion of the city is made difficult and dangerous by reason of the crossings at grade of the main arteries of the city by the main lines of the steam railroad companies above named to the great danger and detriment of the people intercommunicating between these sections of the city and the business center of the city, and to the injury and damage to a greater or less extent of all the property situated in those portions of the city so separated from its business center or traversed by the tracks complained of.

That a number of important and populous towns and cities including the city of Pasadena, with more than forty thousand inhabitants, and whose inhabitants, and whose tourists and visitors, largely find their center of trade in the city of Los Angeles, are so situated that all persons traveling from them to the business center of the city of Los Angeles are compelled to cross one of more of the main tracks of the defendants at grade, to the great danger of personal injury.

III

Your complainant would further represent that the area of the city of Los Angeles is crossed from the North to

the South, near its business center, by the Los Angeles River, the bed of which is of an average width of three hundred feet. That in order to afford communication between the portion of the city on each side of the river, it [fol. 14] is necessary to maintain across the same bridges, and viaducts; that several of these structures are of necessity in such form as to make their use difficult and dangerous on account of the excessive grades of the approaches to them, and that a number of them are in such condition of disrepair that the city will shortly find it necessary to replace them with more adequate structures, and that in order that such replacement and rebuilding shall be done properly there should be a readjustment of the tracks of some of the defendants running along and near the said Los Angeles River, and which are crossed by said bridges and viaducts, or the approaches thereto.

That in order to relieve the people of the city from the danger, damage and inconvenience of the existence of the numerous grade crossings and other conditions complained of, it will be necessary to concentrate the various tracks of the defendants above named and also to provide for the use by the lines of said defendants entering and leaving the city with passengers and freight of a rearrangement of the passenger stations, and of the freight stations or depots.

That the injury and menace to life and property is constantly increasing with the growth of the city and the business of said defendants; and that thereby the barrier between the center of the city and the districts to the North and East is constantly becoming more intolerable.

Now, therefore, Complainant prays your Commission to take official action,

To investigate the entire situation.

To hear all parties and examine all designs.

To order relief by reclaiming Alameda Street and other streets, by the improvement and abolition of grade crossings, and by reorganization of the trackage situation so that, as far as possible, the operation of the lines of the defendants along or across the streets of the city of Los Angeles may be eliminated, to the extent that the present [fol. 15] and future switching facilities required by the commercial and industrial sections will not be impaired, taking such further, other or additional action as may be

necessary or expedient to improve the present condition herein complained of.

Dated Los Angeles, Cal., July 3, 1916.

(Signed) F. W. Blanchard, President the Central Development Association of Los Angeles.

Duly sworn to by F. W. Blanchard. Jurat omitted in printing.

[fol. 16] [File endorsement omitted]

BEFORE RAILROAD COMMISSION OF CALIFORNIA

[Title omitted]

Case No. 971

ANSWER OF A. T. & S. F. RY. CO.—FILED JULY 29, 1916

Now comes the Atchison Topeka and Santa Fe Railway Company one of the defendants named in above entitled proceeding, appearing for itself only, and for its separate answer and defense to the complaint filed in said proceeding respectfully shows.

I

Answering third paragraph of said Complaint this defendant shows that it has no information nor belief sufficient to enable it to answer that portion of said paragraph charging and alleging that certain bridges and viaducts in said city of Los Angeles are in such condition of disrepair that city will shortly find it necessary to replace them with more adequate structures, and on that ground denies said allegation and all thereof.

II

And it denies that portion of said paragraph three which alleges that in order to relieve people of the city from danger, damage and convenience of the existence of the numerous grade crossings, it will be necessary to concentrate the various tracks of the defendants above named, and also to provide for the use by the lines of said defendants entering

and leaving the city with passengers and freight of a re-arrangement of the passenger stations and of the freight [fol. 17] stations or depots and it denies all of said allegations.

III

And for a further and separate answer and defense to said complaint this defendant shows that there is a defect of parties defendant; that is to say, Pacific Electric Railroad Co. the Los Angeles Railway Co., the City of Los Angeles, and County of Los Angeles, ought to be made parties defendant to said proceeding because it appears upon the face of said complaint that said Pacific Electric and Los Angeles Railway Companies are interested and will be directly affected by any change in the re-arrangement of tracks in the said city of Los Angeles; that said City of Los Angeles is interested and directly affected by any re-arrangement of said tracks especially so far as tracks on streets and across streets are concerned in said city; that said city is interested in so far as said proceeding may involve a change in any bridges in said city, and furthermore, that said city and County of Los Angeles ought reasonably to be required to bear a portion of the expense of making any of the changes proposed by said complaint.

IV

And for a further answer and defense in said proceedings, said defendant shows that the Honorable Commission has no jurisdiction to require this defendant to unite with other defendants in a joint passenger station or to unite with other defendants in a joint freight depot or depots, or to require a separation of grades at street crossings in said city.

Dated July 25, 1916.

E. W. Camp, U. T. Clotfelter, Attys. for Def.

[fol. 18] *Duly sworn to by W. H. Brewer. Jurat omitted in printing.*

[fol. 19] [File endorsement omitted]

BEFORE RAILROAD COMMISSION OF CALIFORNIA

No. 971

[Title omitted]

ANSWER OF SOUTHERN PACIFIC COMPANY—Filed Aug. 7, 1919

Defendant, Southern Pacific Company, for answer herein:

Upon the ground that it has not sufficient knowledge, information, or belief upon the subject to enable it to answer, defendant denies the allegations contained in paragraph I of complainant's complaint, and prays that complainant may be put to its proof thereof.

Upon the same ground, defendant denies the allegations contained in paragraph II of complainant's complaint, with the exception that defendants do, as alleged by complainant, maintain within the City of Los Angeles separate main passenger stations and separate principal freight stations, and separate yards where passenger and freight trains are made up; and that the Pacific Electric Railway Company operates interurban trains which cross certain of the steam railroad lines of defendants in said City at grade, the number of [fol. 20] which is unknown to defendant; and that this defendant operates on certain streets in said city longitudinally; that some of said grade crossings are upon streets which are traversed by vehicles, loaded trucks and pedestrians, the exact amount of such traffic being unknown to defendant; but defendant denies that the crossings of the streets of said City at grade by defendant's tracks have been in the past productive of many accidents which have been destructive of the lives or property of the people of the city of Los Angeles, or of visitors to said city; or that the intercommunication between the area known as Boyle Heights and East Los Angeles and the business portion of the City is at all made difficult or dangerous by reason of any of said crossings at grade, or to the great danger or any detriment of the people inter-communicating between said sections, or to any injury or damage to any property situated in said city, or otherwise or at all; or that the persons traveling from said sections to the business portion of Los Angeles are at all compelled to cross one or more tracks of defend-

ant at grade, to their great or any danger of personal injury.

Defendant denies that it maintains any viaducts or bridges across the Los Angeles River, or at any other point, or at all, in such form as to make their use difficult or dangerous, on account of the excessive grade of the approaches to them, or otherwise or at all; or that a number or any of them are in such condition of disrepair that the city will shortly find it necessary to replace them with more adequate structures; or that any such replacement or rebuilding would necessitate a readjustment of the tracks of this defendant running along or near the said Los Angeles River which are crossed by said bridges or viaducts, or the approaches thereto, or otherwise or at all.

[fol. 21] Defendant denies that in order to relieve the people of the City of Los Angeles from any danger, damage or inconvenience by the existence of any grade crossing or crossings, or any other conditions complained of, it will be at all necessary to concentrate any tracks of defendant, or to provide for the use by the lines of any of said defendants of a re-arrangement of any of the passenger stations, or of the freight stations or depots of said defendants.

Defendant denies that there is any injury or menace to life or property by reason of anything alleged in complainant's complaint, or otherwise or at all; or that by reason of anything alleged in complainant's complaint, or otherwise or at all, there is any barrier between the center of the said city and the districts to the north and east; or that by reason of anything alleged in complainant's complaint, or otherwise or at all, there is any intolorable condition existing.

For a further and separate defense, defendant alleges that the Railroad Commission of the State of California has no jurisdiction of the above-entitled matter, and has no jurisdiction of the subject matter thereof; and further, that the said Commission has no jurisdiction to enter any order prayed for by complainant herein.

Wherefore defendant prays that said complaint may be dismissed.

C. W. Durbrow, Attorney for Defendant Southern Pacific Company.

[fol. 22] *Duly sworn to by W. R. Scott. Jurat omitted in printing.*

[fol. 23] [File endorsement omitted]

BEFORE RAILROAD COMMISSION OF CALIFORNIA

[Title omitted]

SEPARATE ANSWER OF SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY—Filed July 28, 1916

Comes now defendant, San Pedro, Los Angeles & Salt Lake Railroad Company, and without waiving, but expressly reserving, all objections and exceptions heretofore taken in this proceeding, files this its separate answer herein, as follows:

I

By way of special and separate defenses to the said proceeding and to the complaint, defendant says:

(a) That said Commission has no jurisdiction of the subject matter set forth in the complaint;

(b) That the Commission has no jurisdiction or power to order the construction of viaducts or the abolition of grade crossings within the City of Los Angeles;

(c) That the said Commission has no jurisdiction or power to order the removal of the freight station or business of this defendant in the City of Los Angeles from its present location to any other point;

(d) That said Commission has no jurisdiction or power to order the removal of the passenger station and business of this defendant in the City of Los Angeles from its present location to any other point;

(e) That the Commission has no jurisdiction or power [fol. 24] to reorganize the trackage of this defendant;

(f) That the said Commission has no jurisdiction or authority to order this defendant to join with the other defendants in the acquisition, construction or maintenance of a union passenger terminal within the City of Los Angeles;

(g) That the said Commission has no jurisdiction or authority to order this defendant to join with the other de-

fendants in the acquisition, construction or maintenance of a union freight terminal within the City of Los Angeles;

(h) That the Commission has no power or authority to grant the relief or any of the relief prayed for in the third paragraph of the prayer of said complaint;

(i) That said Complaint does not state facts sufficient to entitle the complainant to the relief, or any of the relief, prayed for;

(j) That the City of Los Angeles, a municipal corporation, the County of Los Angeles, and the Pacific Electric Railway Company, a corporation, are necessary parties to said proceeding and should be joined as parties defendant therein.

II

And this defendant, without waiving any of the separate and special defenses hereinbefore set forth, and as a further and separate answer herein, says:

Referring to the allegations of paragraph II of the complaint, to the effect that complainant has prosecuted a careful investigation of crossings at grade, and the use of the streets of the City of Los Angeles by the railroad lines of defendants above named, this defendant has no knowledge, information or belief sufficient to enable it to answer the same, and basing its denial on that ground denies the said allegations; and on the said ground denies that the results of such investigation, as set forth in said paragraph II, are true or correct.

[fol. 25]

III

Referring to the allegations of paragraph III, this defendant denies that any of the bridges or viaducts across the railroad tracks of this defendant are of necessity in such form as to make their use difficult and dangerous, or difficult or dangerous, on account of the excessive grades of the approaches to them, or otherwise, or at all; and, denies that in the replacement or rebuilding of any such bridges there should be a re-adjustment of the tracks of this defendant crossed by said bridges and viaducts and the approaches thereto.

IV

Denies, that in order to relieve the people of the City from danger, damage or inconvenience of the existence of

the numerous grade crossings and other conditions set forth in the complaint, or for any other reason, it will be necessary to concentrate the various tracks of the defendants, or to provide for the use by the lines of said defendants entering and leaving the City with passengers or freight of a central or union passenger depot, or of one or more central freight stations or depots; and, denies that it would be to the interests of said City, or of the passengers and patrons of this defendant, and of the other defendants, to establish, maintain or construct a union passenger station or one or more central freight stations or depots within said City; and this defendant denies that the tracks of this defendant constitute a barrier between the center of the City and the districts to the North and East thereof.

Wherefore this defendant prays that said complaint be dismissed.

San Pedro, Los Angeles & Salt Lake Railroad Company, by H. C. Nutt, Its General Manager. A. S. Halsted, Its General Counsel.

[fol. 26] *Duly sworn to by H. C. Nutt. Jurat omitted in printing.*

[fol. 27] [File endorsement omitted]

BEFORE RAILROAD COMMISSION OF CALIFORNIA

No. 971

[Title omitted]

AMENDMENT TO COMPLAINT—Filed June 28, 1918

The Central Development Association asks leave to amend its complaint by adding thereto the folowing allegations:

"That the three steam railroad companies, defendants, maintain three separate main passenger stations and subordinate stations in the City of Los Angeles which are not intercommunicating nor situated on main thoroughfares, but are maintained as separate and distinct centers each

with its complement equipment of main tracks, side tracks and spur tracks;

That likewise the said three companies, defendants, maintain three separate centers of freight collection and delivery in said City with subordinate centers with equipments of main tracks, side tracks and spurs, necessitating the maintenance of separate systems of industrial tracks for the collection and delivery of freight;

That said passenger stations and each of them are inconveniently situated, with insufficient facilities for the convenience of welfare of the general public; that they are located apart from centers of communication and are difficult of access on main lines of street and electric railway communication from the various sections of the City of Los Angeles and the people desiring to use said stations;

[fol. 28] That the crossing of the streets of Los Angeles by railroad tracks and of railroad tracks by streets are an integral and essential part of a comprehensive union terminal plan, and the building of said union terminal is a public necessity required for the convenience of the residents and users of the said railroads of the defendant companies;

And further, this complainant alleges that to carry out a comprehensive and efficient plan for the elimination of crossings at grade of defendant companies, it is necessary that a union terminal feasible of operation by the defendant companies be established, and that train layout thereby occasioned may be made without dangerous crossings and obstructions of traffic; that by the present locations of tracks and stations of the defendant companies an excessive and unnecessary use of the streets of the City is caused, resulting in great inconvenience to the people of the City and of the visitors of the City in the use of the streets and in grave risks of the lives and property of such citizens and visitors, and in large damage to the property located on and near said tracks and in danger to the railroad cars and passengers thereon."

And the complainant further asks leave to amend its prayer by adding the following additional ground:

"To order the installation of union passenger and freight terminals by the defendant companies at such points as by the Commission shall be deemed wise and proper for the

accommodation of the traffic in, to and out of the City and for the use of said defendant companies and such other railroad companies as may be under the order of the Commission entitled to use the same upon such terms as shall be just."

Central Development Association, by Seward A. Simon, Attorney.

[fol. 29] [File endorsement omitted].

BEFORE RAILROAD COMMISSION OF CALIFORNIA

Case No. 971

[Title omitted]

ANSWER TO AMENDMENT—Filed July 5, 1918

Comes now The Atchison, Topeka and Santa Fe Railway Company and appearing for itself only, for its separate answer and defense to the amendment made by leave of the Commission to the complaint in the above entitled matter, respectfully shows:

It admits that the three steam railroad companies defendants maintain three separate main passenger stations as subordinate stations in the City of Los Angeles which are not intercommunicate but are maintained as separate and distinct centers, each with its separate equipment of main track, side track and spur track, but denies the allegations that the passenger station of this defendant is not situated on a main thoroughfare.

It admits that the said three companies defendants maintain three separate centers of freight collection and delivery in said city with subordinate centers, with equipment of main tracks, side tracks and spurs, but denies that by reason of such facts, or any other facts, there is necessitated the maintenance of separate stations of industrial tracks for the collection and delivery of freight.

[fol. 30] It denies that this defendant's passenger station is inconveniently situated and denies that such station affords insufficient facilities for the convenience or welfare

of the general public and denies that such station is located apart from centers of communication or in difficult access on main lines of street or electric railway or communication from the various sections of the City of Los Angeles and the people desiring to use said station.

It denies that the building of a union terminal is a public necessity required for the convenience of the users of said railway, or any thereof.

It denies that by reason of any facts set forth in said amended complaint, or otherwise, it is necessary that a union terminal feasible of operation by the defendant companies be established or that train lay-outs thereby occasioned may be made without dangerous crossings or obstructions of track, and denies that by reason of the present location of tracks and stations of this defendant an excessive or unnecessary use of the streets of the city is caused, resulting in great inconvenience to the people of the City, or to the visitors of the city of the use of the streets or in great risks to the lives of the residents or the visitors of the city, or of large property on or near such tracks, or in danger to the railroad cars and passengers thereon.

Dated July 3rd, 1918.

E. W. Camp, Robt.. Brennan, Attorneys for the Atchison, Topeka and Santa Fe Railway Company.

[fol. 31] *Duly sworn to by W. H. Brewer. Jurat omitted in printing.*

[fol. 32] [File endorsement omitted]

BEFORE RAILROAD COMMISSION OF CALIFORNIA

No. 971

[Title omitted]

ANSWER OF DEFENDANT SOUTHERN PACIFIC COMPANY TO AMENDMENT—Filed July 26, 1917

Defendant Southern Pacific Company, for answer herein, denies that the passenger station maintained by it in the City of Los Angeles, State of California, is inconveniently situated, with insufficient facilities for the convenience or

welfare of the general public, or that it is located apart from centers of communication, or is at all difficult of access on main lines of street or electric railway communication from any section of the City of Los Angeles, or of the people desiring to use said station.

Denies that the building of a union terminal in the City of Los Angeles is a public necessity required for the convenience of the residents or users of defendants' railroads.

Denies that to carry out a comprehensive or efficient plan for the elimination of crossings at grades of defendant's [fol. 33] railroad it is at all necessary that a union terminal be established, and denies that in the present location of tracks and stations of defendant there is an excessive or unnecessary use of the streets of the City of Los Angeles, or that by reason thereof there is any great or other inconvenience to the people of the city, or the visitors to the city, in the use of said streets, or any grave risks to the lives or property of any such citizens or visitors, or large or any damage to the property located on or near said tracks, or danger to the railroad cars or passengers thereon.

Wherefore defendant prays that complainants' amendment to their petition, and the petition upon which said amendment is predicated, be dismissed.

C. W. Durbrow, Attorney for Defendant Southern Pacific Company.

[fol. 34] [File endorsement omitted]

BEFORE RAILROAD COMMISSION OF CALIFORNIA

Case No. 971

[Title omitted]

ANSWER TO AMENDMENT—Filed July 17, 1918

Comes now defendant Los Angeles & Salt Lake Railroad Company, (formerly San Pedro, Los Angeles & Salt Lake Railroad Company), and answering the amendment to the complaint of the Central Development Association of Los Angeles, says:

Denies that the three passenger stations of the defendants in Los Angeles are not inter-communicating or situated on main thoroughfares.

Denies that said passenger stations are, or that each of them is, inconveniently situated; and denies that the pro-

posed joint passenger station of the defendants, Southern Pacific Company and Los Angeles & Salt Lake Railroad Company, would afford insufficient facilities for the convenience or welfare of the general public; denies that the said passenger stations are, or that each of them is, located apart from centers of communication, or are difficult of access on main lines of street and electric railway communication from the various sections of the City of Los Angeles and the people desiring to use said stations.

Denies that the building of a union terminal is a public necessity required for the convenience of the residents or users of the City railroads of the defendant companies.

Denies that to carry out a comprehensive or efficient [fol. 35] plan for the elimination of crossings at grade of defendant companies, it is necessary that a union terminal be established in order that train layout may be made without dangerous crossings or obstructions of traffic.

Denies that by the present locations of tracks and stations of the defendant companies an excessive or unnecessary use of the streets of the city is caused resulting in great or unnecessary inconvenience to the people of the City or of the passengers of the City in the use of the streets, or in grave risks to the lives or property of such citizens or visitors, or in large, or any, damage to the property located on or near said tracks, or in danger to the railroad cars or passengers thereon.

And defendant renews the prayer of its original answer herein and asks that said complaint and all amendments thereof be dismissed.

Los Angeles & Salt Lake Railroad Company, by A. S. Halsted, Its General Counsel.

July 16, 1918.

[fol. 36] BEFORE RAILROAD COMMISSION OF CALIFORNIA

Case No. 970

THE MUNICIPAL LEAGUE

vs.

SOUTHERN PACIFIC COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, and SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY

Case No. 971

CENTRAL DEVELOPMENT ASSOCIATION OF LOS ANGELES

vs.

SOUTHERN PACIFIC COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, and SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY.

Case No. 972

CIVIC CENTER ASSOCIATION OF LOS ANGELES

vs.

SOUTHERN PACIFIC COMPANY, THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, and SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY

Case No. 974

CITY OF PASADENA

vs.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY, and CITY OF LOS ANGELES

Case No. 980

CITY OF ALHAMBRA

vs.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY, and CITY OF LOS ANGELES

Case No. 981

CITY OF SAN GABRIEL

vs.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY, and CITY OF LOS ANGELES

[fol. 37] Case No. 983

CITY OF SOUTH PASADENA

vs.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES AND SALT LAKE RAILROAD COMPANY, and CITY OF LOS ANGELES

Application No. 3346. Decided April 26, 1921

In the Matter of the Application of SOUTHERN PACIFIC RAILROAD COMPANY, SOUTHERN PACIFIC COMPANY, and LOS ANGELES AND SALT LAKE RAILROAD COMPANY for Approval of Agreement for Joint Terminal Facilities in Los Angeles, California

Gibbon and Shelton for Municipal League of the City of Los Angeles, Central Development Association of Los Angeles, and Civic Center Association of Los Angeles.

Marshall Stimson for Central Development Association of Los Angeles, and Municipal League of Los Angeles.

Seward A. Simons for Central Development Association of Los Angeles.

Joseph Scott and Edward D. Lyman for Los Angeles Chamber of Commerce.

John Munger and J. H. Howard for City of Pasadena.

Albert Lee Stephens, Howard A. Robertson, Chas. S. Burnell, Jess E. Stephens and H. Z. Osborne, Jr., for City of Los Angeles.

T. D. McFadden for City of San Gabriel.

William Hazlett, City Attorney, for City of South Pasadena.

A. S. Halsted for Los Angeles and Salt Lake Railroad Company.

[fol. 38] C. W. Durbrow and George D. Squires for Southern Pacific Company.

E. W. Camp and U. T. Clofelter for The Atchison, Topeka and Santa Fe Railway Company.

Frank Karr and E. E. Morris for Pacific Electric Railway.

R. A. Rowan for Los Angeles Realty Board.

Fred P. Gregson for Associated Jobbers of Los Angeles.

F. L. Hilton and C. M. Lorraine for City of Alhambra.

Gibson, Dunn and Crutcher for Los Angeles Railway.

W. H. Workman, Jr., for Los Angeles City and County Viaducts Association.

Will D. Gould, President, for Northwest Improvement Association.

Charles W. Lyon for City of Santa Monica and City of Venice.

Herbert J. Goudge for Business Men's Association of Los Angeles.

W. C. Shelton for Business Men's Co-operative Association.

R. W. Kelly for Brooklyn Avenue and Malabar Improvement Association.

Leonard B. Slosson for Municipal League of the City of Los Angeles.

George A. Damon for City Planning Association.

Gordon G. Dunlop, Chairman of Los Angeles Conference of City Planning.

J. G. Wingert for City of Whittier.

B. E. Page for Business Men's Stability Association.

DECISION No. 8901

Opinion

By the COMMISSION:

These seven cases and the applications, with the consent of the parties, were consolidated into one proceeding. [fol. 39] In the seven cases the various complainants have asked the Commission to make a comprehensive investigation into the entire railroad situation in the city of Los Angeles, to the end that there be brought about elimination of grade crossings, the consolidation and unification of the tracks of the various railroads, the establishment of a union passenger station, and better freight facilities, and the Commission is asked to make its orders for the execution of definite plans upon the completion of such investigation.

Application No. 3346 is a joint application by the Southern Pacific Company (hereinafter referred to as the Southern Pacific) and the Los Angeles and Salt Lake Railroad Company (hereinafter referred to as the Salt Lake) ask-

ing the Commission's approval of an agreement between the two companies providing for the joint use of the Los Angeles terminal facilities of the two roads, and also for the possible joint use of certain facilities by the Pacific Electric Railway (hereinafter referred to as the Pacific Electric) and for the construction and use by that company of certain new and additional facilities. The Los Angeles and Salt Lake Railroad Company is the same company referred to in some of these proceedings as the San Pedro, Los Angeles and Salt Lake Railroad Company.

1. Review of Proceedings

A brief history of these cases is necessary to an understanding of this proceeding. In July, 1915, several civic organizations of Los Angeles filed complaints against the Southern Pacific, the Salt Lake, The Atchison, Topeka and Santa Fe Railroad Company (hereinafter referred to as the Santa Fe), and the Pacific Electric, asking relief of the grade crossing evil and betterment of transportation facilities. These complaints were joined by a number of other civic and commercial organizations and by several municipalities in the neighborhood of Los Angeles until, in [fol. 40] August, 1916, there were before the Commission the seven complaints consolidated in this proceeding and a considerable number of informal complaints. In July, 1916, upon the request of the city council of Los Angeles, the Commission, in an informal conference with the city council, discussed the grade crossing, freight and passenger terminal conditions in Los Angeles and, at the conclusion of the conference, the city council voted to contribute twenty thousand ($20,000) dollars toward the expense of a complete and thorough investigation to be made by the engineering department of the Commission.

(a) The Question of Jurisdiction

The question of the Commission's jurisdiction was raised by the railroads and by the city of Los Angeles (hereinafter referred to as the city). In a hearing on this question of jurisdiction on September 15, 1916, all of the parties, except the city, urged that the Commission had specific jurisdiction over the issues presented. The city took the position that jurisdiction over all railroad grade cross-

ings in Los Angeles was in the city and not in the Commission.

In October, 1916, the Commission rendered Decision No. 3805 dismissing all proceedings. This action was taken for the reason that, while in the Commission's opinion the jurisdiction in the matters involved, under the terms of the Public Utilities Act, rested with the Commission, nevertheless the investigation asked for required the expenditure of so considerable an amount of public money and was of such great importance to the communities and the carriers involved that, in the Commission's opinion, no action should be taken until it was definitely established where jurisdiction rested in the premises. All of the parties were in agreement with the position taken by the Commission.

The matter was taken to the Supreme Court of the state of California by two writs of mandamus. The Supreme [fol. 41] Court made its decision in both mandamus proceedings on June 11, 1917, upholding the position of the complainants and the Commission, and decided that the Commission had exclusive jurisdiction over the construction and operation of railroads on streets in the city of Los Angeles (Civic Center Association vs. Railroad Commission, 175 Cal. 441). The court said:

"The effect upon the present case may be stated as follows:

"The city of Los Angeles has the power to open, widen, extend and improve streets and to regulate the ordinary uses thereof. The Railroad Commission, under section 43 of the Public Utilities Act, has the power to make orders, which are binding upon the railroad companies under its supervision, to abolish grade crossings of the public streets of a city and to order a separation of grades so that the railroad and street shall not be upon the same level and generally to exercise the powers specified in that section. It cannot vacate the street or direct a cessation of the public use thereof. Its orders are to be directed to the railroad company and not to the city, except so far as may be necessary to apportion the expense of construction and maintenance of the particular mode of crossing which shall be required. The city has the power to alter the construction of its streets at such crossings, or any of them, by elevating them upon a viaduct so as to pass over the railroad or by making a subway passing under the railroad. In either

case, if the change in the street does not interfere with the operation and use of the railroad at the time, the Commission cannot prevent the change and it may be made without the consent of the Commission. But if it does interfere, either at the time or afterward, whether by natural causes or lack of repair of the street as changed or by reason of changes in the construction or use of the railroad subsequently directed or approved by the Commission, the city [fol. 42] must conform to the orders of the Commission so as to avoid such interference.

"It is ordered that the Railroad Commission proceed to consider and determine, upon the merits, the complaints made to it by the plaintiffs herein, and that a writ of mandate be issued to it in accordance herewith."

The city thereupon filed a petition for rehearing. This petition was dismissed by the Supreme Court and the matter of jurisdiction is considered as settled by the Commission.

(b) Engineering Investigation

Immediately after the order of the Supreme Court dismissing the city's petition for rehearing, the Commission in public hearing made arrangements for the necessary engineering investigation. The Commission stated (Transcript page 128):

"As is usual in formal complaints, the complainants will be permitted to introduce their evidence and then the defendants will present their testimony.

"The Railroad Commission proposes to conduct a thorough, comprehensive, and impartial investigation into the entire situation. The Commission will instruct its engineering department to make an exhaustive investigation and to prepare a report which will thereafter be introduced as evidence in these proceedings. Until this report has been prepared and introduced, and all the parties have had a fair opportunity to present their evidence and to cross-examine witnesses, no conclusion will be reached.

* * * * * * *

"I assume that it will be entirely unnecessary to say that the Railroad Commission approaches this case, as every

other case, with an absolutely open mind and with an earnest desire to ascertain all the facts, so that a just and constructive solution of the problem may be reached. It is our intention to view this problem in the largest possible [fol. 43] aspect and to reach a conclusion which will serve the needs not merely of today, but also of the future. The people of the City of Los Angeles and the surrounding communities and railroads are entitled to an exhaustive and thorough consideration of the problems here presented and such consideration they will receive from the Railroad Commission.

"In this work, which will mean so much to the people of this community and the surrounding communities, as well as the railroads, the Railroad Commission, of course, expects the fullest consideration and cooperation from all parties—the complainants, the railroad companies, and the public authorities."

In December, 1917, public hearings by the Commission were continued until further notice pending the completion of the report which the Commission had instructed its engineering department to make.

(c) Federal control

Shortly after the assumption of operating control of the country's railroads by the federal government, the United States Railroad Administration issued its general order for the unification, as far as possible, of railroad facilities, including terminals in cities. Los Angeles was one of the cities whose terminals the Director General of Railroads desired to unify. He made request on this Commission to give him the benefit of its investigation and its recommendations in the Los Angeles grade crossing and terminal situation. As a result of this request, the Commission's engineering department made two reports, the first one in September, 1918, and the second in January, 1919. Both of these reports contained recommendations that could be put into effect during federal control and calculated to improve certain unsatisfactory traffic and grade crossing conditions, with the effect of considerable immediate savings in operating costs. While the [fol. 44] recommendations in the first report were urged

upon the Director General by the Commission alone, the proposals in the second report were the joint recommendations of the Railroad Administration's own engineers (who had been assigned to this problem by the Director General) and the engineers of this Commission.

These emergency recommendations, looking towards temporary unification of transportation facilities as a war measure, ceased to be controlling with the end of the war. With the railroad emergency passed and with the termination of federal control in sight, it was possible again to look towards the permanent rather than a temporary solution of the Los Angeles grade crossing and terminal problem, and the Commission's engineering investigation was continued on that basis.

(d) Completion of Engineering Investigation and Subsequent Proceedings

In July, 1919, the investigation by the Commission's engineers was completed and the chief engineer made his report to the Commission. This report was printed and distributed to all of the parties to these proceedings and was also made generally available.

At a hearing held February 17, 1920, the Commission arranged for a conference of engineers representing all interests to study the engineering department's report and to ascertain those matters on which there was agreement and those on which there was disagreement, asking the engineering conference to report to the Commission and give its reasons for the disagreements, if any. After a hearing on April 22, 1920, the Commission decided to withhold from consideration by the engineering conference questions of policy, apportionment of costs, operating agreements and financing.

The engineering conference made its report to the Commission on August 13, 1920, and a number of further public hearings were thereafter held until the proceeding was submitted.

A large number of exhibits were filed by the various parties to these proceedings. Much testimony was taken [fol. 45] and witnesses for the complainants, the defendants, and the Commission were examined and cross-examined at great length. Arguments by counsel were heard

by the Commission and briefs were filed, and the matter is now ready for a decision.

Since it will become necessary in this and in probable future decisions in this proceeding to make reference to some of the numerous exhibits introduced in these cases, a complete list is attached to this decision as Appendix "A".

2. Results of Commission's Engineering Investigation

(a) Commission's Exhibit No. 1

Commission's Exhibit No. 1, entitled "Report on Railroad Grade Crossing Elimination and Passenger and Freight Terminals in Los Angeles," by Richard Sachse, chief engineer, and dated July 31, 1919, contains the results of the investigation made by the Commission's engineers. As stated above, this report was printed and distributed not only to the parties in this proceeding, but to others interested in this matter.

The report goes exhaustively into all of the engineering matters before the Commission in these proceedings and deals with the following main divisions:

(a) Grade crossing elimination,

(b) Union passenger terminal,

(c) Joint main line and industrial trackage,

(d) Improvement and possible rearrangement of freight and facilities,

(e) Electric interurban, street railway, and automobile traffic,

(f) City streets, viaducts, and bridges, and the relation of the transportation problem to the general subject of city planning.

Again, the engineering investigation distinguishes between:

(a) Work to be done within the city limits of Los Angeles,

[fol. 46] (b) Work to be done outside the city limits of Los Angeles.

The work contemplated is dealt with in the report under the "unit system," and a program is laid down for—

(a) Work to be commenced and carried out immediately after a plan has been adopted,

(b) Work to be carried out later, and

(c) Work for the more distant future.

It will not be possible, in this decision, to review Commission's Exhibit No. 1, even in a summary way, and only the conclusions and recommendations of the chief engineer, contained in this letter to the Commission, of July 31, 1919, will be here quoted.

"It will be convenient to give to the Commission in this letter our conclusions in the three main branches of the investigation (possibility of grade crossing elimination; desirability, location and plan for a union passenger terminal; possibility for improvement in the freight situation) and in the matters related to these three main branches."

Grade-crossing Elimination

This is the most important of the three subjects and is the one that is of the most vital importance to the public and to the railroads. It is also the controlling engineering element in the entire report and, to a large extent, governs the solution of the union terminal and freight problems. We believe that all complaints against the unsatisfactory grade crossing conditions in Los Angeles, within the scope of this report, can be satisfied and that a permanent solution of the problem can be had by the adoption of our recommendations. These are:

1. Eliminate all important grade crossings on both banks of the Los Angeles River through the depression of [fol. 47] the railroad tracks and the elevation of the streets by means of the improvement of existing, and the construction of new, viaducts across the river and across the tracks adjacent to the river. The streets to be so treated are North Main, Macy, Aliso, East First, East Fourth, East Seventh and East Ninth streets. The North Spring street crossing is to be entirely eliminated and Alhambra avenue crossing is to be protected by an improved interlocking plant. The

recommendations should be carried out substantially in the order and according to the plans given in this report.

2. Allow tracks to remain on Alameda street but eliminate all (except approximately 3 per cent) of the present railroad traffic by diversion to better channels. The remaining traffic (consisting of switching service) is to be handled at night between Macy and Ninth streets. Eliminate all main line traffic from Alameda street.

3. Bring about the elimination of Sixty-first street, eight electric railway, and two steam railroad crossings by the adoption of the Santa Fe plan for an improved line between Los Angeles and Pasadena. Bring about the elimination of an additional twenty-eight grade crossings on the Salt Lake Railroad by requiring that road to join in the construction and the use of the proposed Santa Fe line and by the abandonment and removal of its present tracks between the termini of the proposed line. If, in addition to the existing rapid transit lines, a municipal electric line should be built between Los Angeles and Pasadena, this line should be located on the same right of way (additional width to be acquired) and should be combined with the Santa Fe and the Salt Lake between Los Angeles and Pasadena.

4. Depress Santa Fe avenue and raise the Butte street tracks to eliminate the grade crossing at Butte street and [fol. 48] Santa Fe avenue.

Union Passenger Terminal:

After a most exhaustive consideration of all arguments for and against a union passenger station in Los Angeles, we have come to the conclusion that the establishment of such a station is desirable both from the standpoint of the public and from the standpoint of the railroads, that the cost is justified and that the project can be financed. The reasons for this conclusion are given in detail in the body of the report.

We have found three sites adapted to the location of such a station, viz: The Plaza site, the Santa Fe station site, and the Southern Pacific station site. Detailed plans and estimates have been worked up by us for each of these locations, and the recommendations contained in the report have been fitted to each of the plans. Of the three

plans, the Plaza plan is the best and it is our recommendation that the Commission order the establishment of a union passenger station at this site substantially in accordance with the plan we have developed.

Freight:

We believe that the matter of proper freight facilities is of even greater importance to the city of Los Angeles than the matter of steam railroad passenger facilities. It is our conclusion that freight traffic conditions are not unsatisfactory and that no far reaching recommendations are necessary to bring about such further improvements as appear to us desirable. Our recommendations in this connection are:

1. Tracks should not be removed from Alameda street at this time, but all possible traffic should be removed from that street (see recommendation No. 2 above).

2. The so-called "Santa Fe alley spur" should be re-
[fol. 49] moved north of Butte street.

3. Dealing with switching service and spur tracks for the future, we recommend that:

(a) New permits be not granted for industry tracks longitudinally in the streets.

(b) All tracks now longitudinally in the streets be confined to industrial purposes only and be removed as soon as better access to the industries served can be obtained.

(c) All spur tracks to be built in general easterly and westerly direction from the river banks and not across east and west streets unless, by such construction, the crossing of important north and south streets is avoided.

4. The establishment of a union freight station for less than carload freight at Santa Fe freight yard site on Santa Fe avenue from First to Seventh streets is recommended. The present Santa Fe freight station is to become a part of this union freight station. This we consider a very important recommendation and one that will be of great and permanent benefit to the railroads and to the shippers in Los Angeles.

5. The establishment of team yards along the east side of Alameda street is recommended, as outlined in the report.

6. We recommend the construction of new freight yards farther away from the industrial district. A new yard is recommended for the Southern Pacific, following the plans of this road, along the San Fernando road, and a new yard for the Santa Fe is recommended on the Fullerton line just east of Hobart, on land already acquired.

Related Recommendations:

Related to the foregoing recommendations are certain other matters that are either before the Commission in various applications consolidated with this proceeding or that are important factors in the terminal problem and that [fol. 50] fall within the scope of this report.

1. Union Passenger Station and Electric Interurban Service.—If our recommendation for the establishment of a union passenger station at the Plaza is adopted by the Commission, we recommend also the construction of a subway from the present Pacific Electric station at Sixth and Main streets northerly along Main street to and under the passenger station, changing to an elevated railroad along Ramirez street and meeting the present line at the Aliso street bridge. This line from here would continue as an elevated railway to Brooklyn avenue where the present tracks and grade would be met. This subway construction along Main street should be undertaken within the next five years.

The present elevated Pacific Electric structure in the rear of the Main street station should be extended to Alameda street and thence south to Fourteenth street.

We realize that this is a far-reaching recommendation but believe it justified and essential in the interest of transportation and city development in Los Angeles, for reasons given in the report.

2. Continuation of Consolidated Uptown Ticket Office.—This matter is related to our recommendation for a union passenger station. We urge that the existing consolidated uptown ticket office be continued, pending the establishment of a union passenger station after the railroads return to private control. This recommendation is made because the present arrangement instituted by the United States Railroad Administration has proved satisfactory in every respect to the public and to the railroads.

3. Application No. 3346 (Southern Pacific Company and Salt Lake Railroad for approval of agreement covering joint terminal facilities.—It follows as a result of the recom- [fol. 51] mendations contained in this report that this application should be dismissed.

4. Application No. 2962 (Industrial Terminal Railway to issue stock for the construction of a switching and terminal railway).—This application should be dismissed for the same reasons, although it will probably appear that with the adoption of our recommendations another application of this nature will likely be filed later on in a modified form.

5. Application No. 3037 (Los Angeles and Salt Lake Railroad Company for authority to establish fourteen grade crossings in order to enable the construction of a freight terminal on Alameda street).—We recommend that this application be denied since our recommendation for a less than carload union freight station at the Santa Fe site will take care of all such freight requirements.

6. Case 938 (Interlocking at Aliso street and the Los Angeles River).—In this case the Commission made its order directing the installation of an interlocking plant to control the Pacific Electric Railway, the Santa Fe and the Los Angeles and Salt Lake roads at this point. A supplemental order was later issued holding the matter in abeyance pending the completion of this report. Since our recommendations for the separation of grades and for a union passenger station will eliminate this crossing, the construction of this interlocker will not be necessary. An order should be issued to this effect after the adoption of our recommendations.

7. Pairing of Southern Pacific and Salt Lake Tracks Between Los Angeles and Colton.—The recommendation for such pairing of tracks was made to the Director General jointly by the engineers representing the federally controlled railroads and by the Commission. Although this recommendation is very clearly to the benefit of the interested railroads and although the improvement can be made with very small expenditure and although an annual saving in the cost of operation was estimated at $173,025 [fol. 52] (and this estimate has in the meantime increased),

nothing has been done to carry out this recommendation. We can see no reason and have no explanation for the inaction on the part of the United States Railroad Administration. The recommended plan will work perfectly with our recommendations and we again urge that the proposed pairing of tracks as outlined in the report be put into effect by the action of this Commission as soon as the operating control of the roads is released by the Federal Government."

Detailed cost estimates for the work included in these recommendations are contained in Commission's Exhibit No. 1. In these estimates, distinction is made between the costs of the various steps in the proposed ultimate plan, with the ultimate capital expenditure for all recommendations estimated at $32,233,445. Referring to this grand total, the report states:

"While a capital expenditure of over $32,000,000 seems large, it should be remembered that this money is to be expended over a term of years. In any event, whether the foregoing recommendations are adopted or not, very large capital expenditures aggregating probably in the neighborhood of the sum estimated by us will become necessary in the near future if the transportation of Los Angeles is to keep pace with the growth and the industrial and business development of the city. The choice is not between a large expenditure if these recommendations are adopted and a small one if they are not adopted; it is rather between an adequate and carefully planned development without wasteful expenditures and a haphazard growth dictated, in the main, by private interests from the standpoint of each individual road. In either case the burden of capital and operating costs must, in the end, be borne by the public.

It is impossible to estimate in dollars the direct and indirect savings and benefits through the carrying out of these plans that will accrue to the railroads, to the pas- [fol. 53] sengers and to the shippers, and also to the people and enterprises affected by transportation conditions. We have no hesitation in saying, however, that, from the financial standpoint alone, the proposed expenditure is justified."

(b) The Engineering Conference

There was opposition to and disagreement with, principally on the part of the railroads, certain of the conclusions and recommendations contained in Commission's Exhibit No. 1. This disagreement involved also what seemed to the Commission questions of fact and, in order to have the fullest information on all important engineering matters, it was decided to refer Exhibit No. 1 to a conference of engineers representing all parties.

Instructions were given to the engineers to carry this conference forward for the purpose of establishing, as clearly as possible, all matters of agreement and disagreement and to lay before the Commission the conference's views on the information and recommendations contained in this exhibit. In the course of the conference's activity, the question of the scope of its work arose and this matter was settled by the Commission's instructions issued as a result of the hearing held on April 22, which read as follows:

"The following instructions should govern the work of the engineering conference appointed to study the Los Angeles terminal report:

(1) The conference should consider the following engineering matters on the basis of the engineering department's report:

(a) As regards grade crossing elimination and freight improvement, all matters of design, track layout and arrangement of facilities.

The matter of a passenger treminal is to be handled as follows: The conference is not to recommend the location of a union passenger terminal; nor is it to report on the policy of establishing such a terminal. It is to report on [fol. 54] the three plans for passenger terminals set forth in the Commission's engineering department's report as to design, track layout, cost estimates, and operation.

(b) Matters of unit costs and estimates for the work proposed under the various subdivisions of the report.

(c) Matters of the advantages and the disadvantages of possible locations of the structures and facilities contem-

plated in the report, including grade separations and freight facilities.

(d) Matters dealing with proposals and recommendations on electric transportation and recommendations affecting interurban rapid transit and street railway traffic.

(e) Matters of operation and traffic, including street, electric and steam railway traffic and all other traffic in so far as it is affected by the problems under consideration.

(2) The engineering conference is not expected to deal with the following matters:

(a) Apportionment of costs between the various parties.

(b) Traffic arrangements and operating agreements as between the various parties.

(c) Methods of financing.

(3) The Commission would like to have the conference report on the matters on which there is agreement between the engineers and on the matters on which there is disagreement, with reasons for the disagreement, if possible."

The engineering conference, in which twenty-two representatives of the various parties and three engineers of the Commission participated, divided its work among six subcommittees—grade crossing, union passenger terminal, freight, rapid transit and street railways, estimate, and electrification. These subcommittees reported their conclusions and these, together with the summarization by the Commission's chief engineer and certain exceptions taken by individual engineers, were introduced as Commission's Exhibit No. 2.

[fol. 55] It may be said that the result of the engineering conference was an indorsement of the recommendations of the Commission's engineers, with certain changes and modifications in the proposed plans and with a revision of the cost estimates, due mainly to a revision of prices and costs as of March, 1920, reflecting the increased costs of labor and materials. This indorsement of the recommendations in Commission's Exhibit No. 1, however, was not unanimous, the Southern Pacific-Salt Lake-Pacific Electric engineers remaining in opposition to any plans not in

conformity with the proposals advocated by this carrier group. The plans of these three interested railroads will hereafter be discussed. As a result of the study made by the engineering conference, the Commission's engineers revised certain of their plans and adopted a number of suggestions made by the conference. These revisions and changes are set forth in Commission's Exhibit No. 2.

3. The Position of the Railroads

There are involved in these proceedings all of the steam and electric railroads operating in Los Angeles. The two steam lines, the Southern Pacific and the Salt Lake, and the interurban electric and street railway, and Pacific Electric occupy, in general, the same position on the major questions concerned in these cases. The Sant Fe occupies an independent position and the Los Angeles Railway, the local street railway, is affected and interested to only a minor degree.

(a) The Southern Pacific-Salt Lake-Pacific Electric Position

The view of these three carriers is set forth in the brief filed by counsel for the railroads. Substantially, it is as follows:

It is denied that the Commission has jurisdiction to order the joint use of tracks or terminal facilities of interstate railroads.

The freight terminal and industrial situation as it now exists in Los Angeles is satisfactory to all concerned.

[fol. 56] Complete grade elimination may be effected under the Southern Pacific-Salt Lake plan.

The Commission's engineers' plan for relieving interurban traffic is impracticable.

The elimination of grade crossings will cost less under the Southern Pacific-Salt Lake plan than under any other plan.

Public interest does not require the establishment of a union passenger terminal, the question of expense is controlling and the expense of a terminal at the Plaza is prohibitive.

The adoption of the Southern Pacific-Salt Lake-Pacific Electric plan meets the requirements of the traveling public, the city and the carriers. The Southern Pacific-Salt

Lake plan, as it was placed before the Commission in Application No. 3346 and modified subsequently by the railroads, as shown on the so-called Titcomb plan, provided substantially for the joint use of the present Southern Pacific passenger station at Fifth and Alameda streets and for joint use of Salt Lake trackage on the east side of the Los Angeles River, together with elevated track connections commencing in the vicinity of Sixth and Alameda streets and running easterly and by bridge across the Los Angeles River to a connection with the tracks of the Salt Lake. Provision is also made for a proposed passenger train car yard to be located on property of the Salt Lake Company, and for an ultimate joint interchange yard, upon property of the Southern Pacific, between Dayton avenue and Aliso street.

The agreement also provides that the Salt Lake shall grant to the Southern Pacific, for the sole use of the Pacific Electric, without rental therefor, a right of way for the construction and operation of a double-track electric railway on the Salt Lake right of way, along the east bank of the river. It contemplates the continuation of the present Pa- [fol. 57] cific Electric elevated structure from San Pedro street easterly to Alameda street. At Alameda street, the Pacific Electric tracks would cross over the Southern Pacific steam elevated railroad, involving what may be called a "two-story crossing." West of Alameda street, the Pacific Electric tracks would run parallel and adjacent to the Southern Pacific tracks across the river to the right of way to be acquired from the Salt Lake to a connection with the present line. The construction and rearrangement of numerous facilities are made necessary and are contemplated in this plan.

The plan itself and the agreement between the railroads do not make provision for a comprehensive elimination of grade crossings. The three roads declare themselves in general agreement, however, with the general plans shown in Commission's Exhibit No. 1, for the separation of grades.

The Southern Pacific is opposed to the Santa Fe's use of the proposed Southern Pacific-Salt Lake union passenger depot.

The position of the Pacific Electric was stated by its President, Mr. Paul Shoup, who declared:

"Our position is tied up absolutely, speaking as a Pacific Electric officer now, with the Southern Pacific and Salt Lake

plan, and none other is acceptable or would be acceptable to us among the plans presented."

It may be stated, therefore, that the position of these three railroads is in favor of the grade crossing elimination program as developed by the Commission's engineers, and is in favor of a joint passenger station, provided that such a station is located at the point selected by these railroads and provided the joint track and other facilities are constructed in accordance with the railroads' plans; and further provided that the Santa Fe has no part in such joint use. These three roads are opposed to any proposals that are in conflict with these proposed arrangements.

[fol. 58] (b) The Santa Fe's Position

The Santa Fe is in favor of a separation of grades under a reasonable plan in general agreement with the plan outlined in Commission's Exhibit No. 1.

The company calls attention to the necessity of careful consideration in the final adoption of grade separation plans of the flood conditions of the Los Angeles River and the necessity of lowering the Santa Fe main line tracks, and, especially, to the importance of a proper division of the expense. A separation of grades between Los Angeles and Pasadena this company believes to be a matter for the future, because of the large expense involved.

The Santa Fe is opposed to a union freight station for handling less than carload business.

In the matter of a union passenger station, the counsel stated the view of the railroad as follows:

"Commissioner Edgerton: Well, Mr. Camp, if there was—and I only say this to get an expression of position from you—if it was decided that the union terminal passenger station was advisable, which of the various ones suggested does the Santa Fe prefer?

"Mr. Camp: Well, of the three which Mr. Sachse says are the only three which have been proposed, I understand that we would not prefer but we would dislike least the Plaza. But we are very far from standing here and advocating the Plaza site. We are not at all. And it does seem to us that the Commission could leave that to the very indefinite future, go ahead with the elimination of grades. Now, the first proposition, as I understand it, is to eliminate grade

crossing at Aliso and at Macy streets, and that can be done without any reference to any union terminal station, passenger or freight. Why shouldn't it be done? And then discuss the terminal proposition at our leisure, say somewhere about 1935, or something of that sort."

[fol. 59] (c) Position of Civic Organizations

The Business Men's Association is in favor of the ordering by the Commission of steam railroad crossing elimination along the river and approves of the Salt Lake-Southern Pacific-Pacific Electric plan substantially as presented by these roads, and opposes the establishment of a union L. C. L. freight station.

The Central Development Association of Los Angeles indorses in all essentials the plans and recommendations of the Commission's engineers in Exhibit No. 1 and urges an order by the Commission adopting these plans and providing for successive steps for their consummation. A similar position was taken by the Los Angeles City and County Viaducts Association, the Northwest Association, the Brooklyn Avenue and Malabar Improvement Association and by the Civic Center Association.

The Business Men's Cooperative Association is in favor of the adoption of a comprehensive terminal and grade crossing plan and indorses the recommendations contained in Commission's Exhibit No. 1, especially as to the items of grade crossing elimination and union passenger terminal. This association, as also the organizations mentioned in the preceding paragraph, is opposed to the Southern Pacific-Salt Lake-Pacific Electric plan.

The Municipal League of Los Angeles suggests a further investigation, by the Commission, of a possible additional site for a union passenger station (at Sixth street and the east bank of the Los Angeles River), which has not been reported on by our engineers, and on which no plans or estimates, except general sketches, are before the Commission. The Municipal League, however, has indorsed and is in favor of the grade crossing elimination plans in Commission's Exhibit No. 1.

(d) Position of the City

Throughout these proceedings the city has maintained the position that an impartial and reliable investigation of

the problems included in these cases should be made and [fol. 60] that a program for their solution should be adopted based strictly on the merits of each feasible plan. The city urges that the Commission give due consideration to the necessity and convenience of the traveling and local public in Los Angeles and of the needs of the city as an important freight traffic center. The city also urges that the growing importance of Los Angeles, measured by the increasing population and industry, should be kept in mind and that relief be planned having regard to the reasonable needs of the future.

From this standpoint the city authorities and the city departments worked in close cooperation with the Commission's engineers during the investigation. The fact of the city contributing a considerable portion of the cost of the investigation further substantiated this position. The city has expressed its desire to further cooperate with the Commission in bringing about the realization of such plans as may be adopted and has offered to assume its share of the necessary cost. The city's attitude has been expressed by the city council in formal resolutions after submission of the case, from which we quote:

"Whereas, For some years the matter of eliminating grade crossing and coordinating and readjusting the transportation lines of the city of Los Angeles, so that the same shall represent modern, up-to-date, convenient and safe transportation in the city, has been before the public of the city and surrounding municipal communities, and during that time considerable money has been spent by the city to secure the opinion upon the matter of numerous experts; and

"Whereas, The city has obtained the opinion of the great municipal transportation expert, Bion J. Arnold, of Chicago, upon the matter, and that opinion specifies as a necessary factor in accomplishing these purposes the creation within the city of Los Angeles of union passenger and freight stations; and

[fol. 61] "Whereas, Later a commission appointed by the city, consisting of three able and impartial engineers, announce that in their judgment the creation of joint passenger and freight terminals was necessary to the solution of these problems; and

"Whereas, Finally, at a cost of $20,000 to the city, the matter was taken up with the State Railroad Commission for investigation and determination, and the engineering experts of the Commission have, after many months of investigation, rendered an elaborate and costly report in which they also found that the creation of passenger and freight terminals were necessary to the accomplishment of the above mentioned purposes; and

"Whereas, The City Planning Commission, recently appointed by the council for the purpose of making plans for the systematic development of our city along lines which shall provide for civic beauty as well as civic convenience and necessity, finds itself unable to enter upon the making of said plans until the matter of abolishing grade crossings and coordinating our city transportation service in union stations is decided upon and the same are definitely located; therefore, be it

"Resolved, That the State Railroad Commission is informed that it is the judgment of this body that these matters should be decided upon as soon as possible, and that their decision, in accordance with the universal findings of the above mentioned engineering experts, should provide for the establishment of both union passenger and freight stations in the city of Los Angeles, and no other solution will satisfy this council."

(From resolution of city council of August 30, 1920.)

And, further from resolution of city council of November 3, 1920:

"Whereas, The chief engineer of the State Railroad Commission has appeared before this council and explained in [fol. 62] detail to it his report to the State Railroad Commission; and

"Whereas, This council is deeply interested in having the State Railroad Commission decide the matter before it in a way which will best serve the interests of the city of Los Angeles, by the most complete elimination of railroad grade crossings and by providing the most efficient and comprehensive coordination of the transportation facilities of the city in a way which will best serve the present interests of the city and will most effectively provide for the entrance of other railroads desiring to build to the city in the future

as well as for the extension of the present Harbor Terminal Railroad now owned by the city to a union station in the city to the end that our great and rapidly growing city shall, for both the present and the future, have the most efficient transportation service; and

"Whereas, The city council, knowing that the State Railroad Commission has had the services of the best engineering experts and has, with the assistance of such experts, gone into the whole matter in a most complete and exhaustive manner, and we have the fullest confidence in the judgment and honesty of the Commission and its capacity to render a decision which will best serve the interests of all concerned; now, therefore, be it

"Resolved, That in view of the great importance of this matter to our city, we respectfully request of the State Railroad Commission as prompt a decision as is compatible with existing conditions, in order that proceedings may be speedily begun toward relieving the dangerous and intolerable conditions now existing; and be it further

[fol. 63] "Resolved, That this council desires to assure the State Railroad Commission of its readiness and willingness to cooperate with the Commission in any and every way in carrying out its findings and recommendations; and be it further

"Resolved, That the city attorney be instructed to file no brief with the State Railroad Commission, either advocating or criticising any of the various suggestions made to said Commission in the hearings of these cases."

Aside from the official position of the parties to this proceeding, there have been filed with the Commission numerous resolutions by chambers of commerce, improvement associations, civic and commercial organizations, and by local authorities of communities adjacent to Los Angeles indorsing or condemning the so-called Southern Pacific-Salt Lake-Pacific Electric plan and also indorsing or condemning all or part of the recommendations made by the Commission's engineers and by the engineering conference.

4. Conclusions of the Commission

There can be no doubt that the issues before the Commission have had a most thorough and impartial consideration

and that every party represented has had the fullest opportunity to present its claims and to develop the advantages and weaknesses in any of the plans that have been presented. It is also apparent that the pending matter involves many technical questions which must be decided upon findings of fact made by technical men. Aside from the technical questions, a comprehensive program depends for its fulfillment to a great degree upon action within jurisdiction of the city, especially in so far as the matter of vacating or opening of city streets are concerned and in the matter of making available such portion of the cost of improvements as the city should bear.

The attitude of the carriers is quite clear. They are concerned with their own individual plans and there is no pros- [fol. 64] pect that they will cooperate on their own accord to bring about a unification of transportation facilities with a view to reducing operating expenses or bettering the service and they are opposed to the adoption of a unified plan that will lay down the lines of their development in Los Angeles for the future.

The carriers are opposed to any considerable expenditures of new capital and this is a matter that must be given careful thought by this Commission. It is clear, however, that large expenditures will have to be made by all the carriers, the steam railroads, as well as the Pacific Electric, for urgently needed betterments, regardless of whether these expenditures are made by each railway in pursuance of its individual plans or whether they are made jointly in the working out of a unified plan. While we are mindful, therefore, of the fact that the question of cost in the last analysis may be the determining factor, we cannot ignore the other fact that large capital expenditures have to be incurred in any event by the railroads and by the city. The conclusion is reached in Commission's Exhibit No. 1 that the choice is not between a large cost if a unified plan is adopted, as against a small one if no plan is followed. The choice is between an adequate and well planned development, on the one hand, and between inevitable wasteful expenditures and a haphazard growth dictated by the interests of the individual roads, keeping in mind that in either case the burden of capital and operating costs must, in the end, be borne by the public.

The soundness of this conclusion has been confirmed by the testimony of all witnesses in this proceeding and we have no doubt of the superiority of a well thought out plan to take care of the present and future transportation needs of Los Angeles, as compared with haphazard competitive development, provided it is possible to carry out such a plan at a reasonable cost.

This opinion is in accordance with the conclusions [fol. 65] reached not only by every technical and expert study made in recent years in similar terminal problems elsewhere in the United States, but it is also the view adopted by the owners of the railroads themselves. The recognition of the necessity that in the future we must have in this country unified railroad terminal development in the larger cities has been definitely incorporated by Congress in the new Transportation Act. It is in that act also recognized that it will not be sufficient to leave the necessary terminal unification to the carriers alone. Power is given the Interstate Commerce Commission in the Esch-Cummins Act to order terminal unification.

This, it seems to us, is a sound and inevitable development. With the present relation between the railroads and the people, whereby the government undertakes to fix rates under a prescribed system designed to give to the railroad as nearly as may be a guaranteed income, in addition to a guaranteed reimbursement of operating expenses, it seems self-evident that every effort must be made to furnish the best possible transportation facilities at the lowest possible cost. It has been amply demonstrated in recent years that the points of greatest waste and greatest congestion in the railroad system are the terminals. We believe, therefore, that unification of terminals, wherever such unification is physically possible, and wherever operating economies can be effected, is bound to come and is only a question of time.

Applying these considerations to the proceeding before us, it is also evident that the elimination of grade crossings in the heart of the city, along the banks of the Los Angeles River, and on the main lines approaching the city can be accomplished with greater certainty and at less cost than if grade crossing elimination is imposed upon each separate railroad as a separate undertaking.

The conditions in Los Angeles for a unified treatment of [fol. 66] the railroad problem appear to be almost ideal.

This is the conclusion in this proceeding, not only of the Commission's engineers, of the engineers of the city of Los Angeles, and the engineers representing parties other than the railroads, but the same conclusion was reached in investigations made by other engineers in years past. Similar decision was reached by a committee appointed by the mayor of Los Angeles upon request of the public utilities committee of the council to study this question on the basis of Commission's Exhibit No. 1. This committee, after an exhaustive study, made the following final recommendations in its report to the mayor and to the city of Los Angeles:

"First. The immediate abolition of grade crossings by carrying out the design of depressed tracks along the river banks, and the building of a union passenger station at the Plaza, and the development of a multiple system of L. C. L. freight terminals, in general accord with the design set out in the report; and

Second. That the city join with and continue to cooperate with the State Railroad Commission in carrying out the plans for the above mentioned design, as set out in the report of the chief engineer of the Railroad Commission, accompanying his letter of transmittal of July 31, 1919."

The engineers of all the steam railroads involved in this proceeding, who have taken part in this investigation as employees of the individual carriers, but who, during federal control, were employees of the United States Railroad Administration, then expressed themselves as in agreement with the principle of terminal unification and so reported to their respective superior federal officers.

We believe that the terminal unification and the grade crossing problem should not be disassociated and that the adoption of a plan providing for both problems is essential.

(a) Grade-crossing Elimination

[Tol. 67] There appears to be no disagreement as to the necessity and urgency for the elimination of the railroad grade crossings on both banks of the Los Angeles River and along Alameda street. Neither is there any material dispute as to the method to be employed to bring about the elimination of the river grade crossings. To remedy the Alameda street situation requires changes in the existing

passenger and freight facilities and there is some dispute as to the methods to be followed to eliminate these crossings.

All parties appear to agree that the program and method for grade crossing elimination proposed in Commission's Exhibit No. 1 is a feasible and sound one. It remains to determine what should be the first step in the crossing elimination plan and, after definite and detailed plans for the elimination of the separate crossings have been filed with and accepted by the Commission, to apportion the cost to the interested parties.

Traffic studies made by our engineers, and reported in Commission's Exhibit No. 1, indicate that in 1917-18 about 65,000,000 people annually crossed the Los Angeles River and the tracks of the Santa Fe on the west side and of the Salt Lake on the east side, adjacent to the river, divided as follows:

	People per annum
Over present 5 grade crossings	33,000,000
Over present 4 viaducts and bridges	32,000,000
Total	65,000,000

The railroad traffic at the time of the investigation amounted to about 560 train movements each day, from 6 a. m. to 8 p. m., or at least 600 movements for 24 hours for the five existing grade crossings mentioned. On Seventh street the crossing gates were found closed as much as 19 per cent of the daylight hours.

Numerous accidents have occurred on these crossings and the delay to vehicular traffic and to interurban electric [fol. 68] cars, as also to street cars, is serious. There is no dispute that public safety, necessity, and convenience require the abolition of all of these grade crossings.

Commission's Exhibit No. 1 proposes that elimination be brought about by construction or reconstruction of viaducts across the railroads and the river with suitable grades of approach and through depression of the railroad tracks and the elevation of the streets. The streets affected by the river crossing program are the following: North Spring, North Main, Alhambra, Macy, Aliso, East First, East Fourth, East Seventh and East Ninth, and the detail of the

recommended depression of tracks and elevation of streets at these points is shown in Commission's Exhibit No. 1. The engineering conference, above referred to, approved of all these designs except at Aliso street. There it was advised that the bridge should, in the future, provide for vehicles and pedestrians as well as the Pacific Electric tracks. The Commission is in agreement with this suggestion and when definite plans for this particular crossing are made, the design appearing on page 173 of Commission's Exhibit No. 1 should be modified accordingly.

On Alameda street, the traffic studies indicate that in a year of the investigation approximately 78,000,000 people crossed Alameda street in its most congested part (Spring street to Alameda street) divided as follows:

Location	Important streets	Electric railways	People crossing tracks per annum
North of Arcade station	9	6	59,000,000
South of Arcade station	4	1	19,000,000
Totals	13	7	78,000,000

The railroad traffic is very heavy; the average street north of the Arcade station is crossed by 157 train movements each day, and the average street south of the station [fol. 69] is crossed by 98 train movements.

Accidents have occurred and there is an important delay to both railroad, vehicular and electric railway traffic. At both Sixth and Seventh streets the crossing gates are down over 15 per cent of the daylight hours. Both danger and delay will increase as time goes on.

It is not practicable to bring about on Alameda street a physical separation of grades. For reasons stated fully in Commission's Exhibit No. 1, it is recommended by our engineers that the tracks be allowed to remain in that street, but that all except approximately 3 per cent of the present railroad traffic be diverted and that the remaining traffic, consisting of switching service only, be handled after midnight between 1 and 6 a. m. between Macy and Ninth streets. All mainline traffic should be eliminated. This will do away with practically all danger and inconvenience resulting from grade crossing movements and will, at the same time, not disturb existing business and industrial conditions. Practi-

cally no increase in railroad operating costs is expected to result from this important change. The engineering conference, as also the mayor's and city council's advisory committee, is willing to continue industrial trackage and switching service on Alameda street with the understanding that Alameda street tracks shall not be connected with any station yards or express yards, nor switching yards nor team yards, but that all such facilities shall be reached by tracks directly from the main lines on the river bank. The Commission believes that the suggested provision should be made an essential condition of the proposed Alameda street arrangement.

In Commission's Exhibit No. 1, it is recommended that between Los Angeles and Pasadena all grade crossings of the Santa Fe and of the Salt Lake be eliminated. This is to be effected by a reconstruction and partial relocation of the existing Santa Fe line and abandonment of the present Salt Lake line and the latter road's participation in con- [fol. 70] struction and joint use of the new trackage or roadbed. This plan will eliminate 61 street, 8 electric railway, 2 steam railroad crossings on the Santa Fe and 28 grade crossings on the Salt Lake. The Commission believes that this important grade crossing elimination plan should form a part of the general plan which it is proposed to lay down in this decision. We are of the opinion, however, that this work need not form part of the first step of such grade crossing elimination as should be immediately undertaken.

This first step should provide for grade separations at Macy, Aliso and Seventh streets. This selection is because of the fact that at Macy street the vehicular traffic is heavier than at any other existing crossing and the present highway bridge is entirely inadequate to handle this traffic. The present bridge is of inexpensive wooden construction and well along toward the end of its life. There is involved the crossing of three steam railroad tracks—two Santa Fe tracks on the west side of the river and a Salt Lake track on the east side.

Grade separation at Macy street should be made substantially in accordance with Figure 41, page 168, of Commission's Exhibit No. 1, that is, by depression of the railroad tracks adjacent to the river to elevation 272.0, city datum, and by raising Macy street to elevation 297.0. The

grades of approach on Macy street should be 4 per cent, as shown on Figure 41, just mentioned.

Grade separation at Macy street, according to this plan, being predicated on partial depression of the tracks, it is absolutely necessary that the Aliso street crossing be eliminated at the same time, because of the short distance between these streets and the fact that practicable railway grades cannot be laid leaving either street at its present elevation and separating the railway and street grades at the other.

Grade separation at Aliso street should be accomplished [fol. 71] substantially as shown on Figure 46, page 175 of Commission's Exhibit No. 1. The local tracks only need to be constructed at this time and the plan should provide for the construction of a highway bridge as well as a railway bridge at some time in the future. The steam railway tracks should be, as shown, depressed to elevation 267.7 and the Pacific Electric tracks raised to elevation 294.2. both city datum.

In connection with the grade separations at Macy and Aliso streets the Santa Fe should take up its present main line tracks across Macy street at about Center street and across Aliso street, between Center street and Los Angeles River, and divert all its traffic to the track adjacent to the west bank of the river.

The grade crossings on Seventh street at both sides of the Los Angeles River are also immediately in order for elimination, because of the fact that the vehicular traffic is extremely heavy, as shown by Figure 22 in Commission's Exhibit No. 1 and there are three tracks of the Salt Lake on the east side of the river and four tracks of the Santa Fe on the west side. The railway traffic is also heavy.

The grades of Seventh street and the railways on the east and west banks of the Los Angeles River should be separated by partial depression of the tracks and partial elevation of Seventh street substantially as shown on Figure 56, page 185, in Commission's Exhibit No. 1.

The carriers will be ordered to submit to the Commission, within a reasonable time, definite plans and cost estimates for these grade separations based on the general plans contained in Commission's Exhibit No. 1. It will be necessary that these plans be approved or modified by the city. The Commission, after approval or modification,

will thereupon fix a fair division of cost by subsequent supplemental proceeding and order.

(b) Freight Facilities

[fol. 72] Commission's Exhibit No. 1 proposes an improvement in the handling of less than carload freight in the city of Los Angeles by provision for a union freight station at the Santa Fe freight yard site on Santa Fe avenue. The existing conditions relative to the handling of carload freight are found to be satisfactory and it is recommended that nothing be done to disturb this satisfactory situation. The importance of properly serving the large number of industries now having trackage connections with the Alameda street line is recognized, and this is the reason for the recommendation against the removal of tracks from Alameda street at this time. This matter has been discussed above in connection with the subject of grade crossing elimination.

The city urges against the adoption of a single union less than carload freight station and desires that provision be made for several of such stations in different parts of Los Angeles. There is, however, no opposition on the part of the city to the selection of the Santa Fe site for the first of such possible union freight stations. There is opposition on the part of the representatives of the railroads to the establishment of a union freight station either at the Santa Fe site or elsewhere. The railroads urge that the present practice of each carrier owning and operating its own freight stations be continued and that each carrier be permitted to develop its freight facilities in view of its own needs.

We are impressed by the arguments advanced by our engineers that the existing freight facilities in Los Angeles can not remain indefinitely in their present condition, and that large expenditures will shortly become necessary irrespective of whether the railroads act jointly or continue independent action in the future. We are not persuaded, however, that the freight situation is such as to require at this time a specific order for the establishment of a union less than carload freight station. Whether or not existing freight stations, or new ones to be established by the [fol. 73] individual railroads, shall be operated as joint

or union freight stations, may be left, we believe, for subsequent decision.

Regardless of whether or not there will come about a unification of freight facilities, we are convinced that the future handling of freight traffic in Los Angeles should be governed by certain considerations which appear to be the conclusions of a number of independent engineers who have studied this question and which also reflect the expressed desires of the Los Angeles city authorities. These are that

(1) New permits should not be granted for industrial tracks longitudinally in streets.

(2) All tracks now longitudinally in streets be confined to use for industrial purposes only and be removed as soon as access to the industries served is otherwise obtained.

(3) All spur tracks shall be built in a general easterly and westerly direction from the river banks and not across east and west streets, unless, by such construction, the crossing of more important north and south streets is avoided.

In this connection the establishment of team yards along the east side of Almeda street is also recommended and suitable locations for such yards, in conformity with the general plan suggested in this decision, will be at College and Alameda streets, at Macy and Alameda streets, at the Los Angeles Market site, and possibly at the proposed Salt Lake terminal site.

(c) Union Passenger Station

There has been presented before the Commission by the complainants in this proceeding, and by others, the most insistent advocacy for the establishment of a union passenger station and also, on the part of several of the carriers and other parties, the most insistent opposition to such a station. We are impressed that in the partisan arguments for and against a union station the essential facts have to some degree been lost sight of. We see no [fol. 74] reason why this question should not be discussed on its merits and determined in accordance with the essential facts in the same manner that it has been agreed the other branches of this investigation should be decided.

The advantages and disadvantages of a union passenger terminal, we think, have been fairly and rather completely discussed in Commission's Exhibit No. 1. The statements contained in that exhibit that the establishment of a union passenger terminal is largely a question of its desirability and of its cost, and that it is not entirely a railroad matter, but also one of public policy, we believe to be statements of fact. To give the principal reasons for and against the establishment of a union station, we quote from Commission's Exhibit No. 1:

A union passenger station is desirable for the following reasons:

(1) As a gateway to the city, Los Angeles prefers one adequate, convenient and beautiful entrance to several separate gateways, none of which can by themselves have all the advantages of a single union depot. This is a matter of civic pride and of city planning for the future. Los Angeles, by reason of its wonderful advantages as a tourist center and as a center of travel, is justified and is sound, in our opinion, in making this consideration one of the first importance.

2. There will be increased convenience to passengers. Since mail, express, and baggage are carried on passenger trains, it is more economical to handle this business at one station. Ten thouasnd dollars per annum would be saved in the handling of mail if a terminal post office were established. The express business amounts, in tonnage, to about one-fourth of the less than carload freight business of Los Angeles and much would be saved by elimination of the wagon haul between the various depots. This saving cannot readily be estimated in terms of money and is dependent on the location of the main depot. The more central the location, the greater the saving. Baggage is also transferred between the stations and—while of lesser importance in cost—increased convenience would result.

(3) Grade crossing elimination would be simplified. When it is maintained that there is no necessity for a union station, it must be remembered that the retention of more than one station will necessitate greater expendiure for the elimination of grade crossings, and, pending complete separation, will result in more vehicular movement across tracks at grade.

(4) Present passenger facilities of the Santa Fe and the [fol. 75] Salt Lake stations are inadequate. Large capital expenditures must soon be incurred in any event to satisfy present and future needs. This is true to a lesser extent of the Southern Pacific station also. A union depot will fill these needs better, permanently, and at a relatively smaller cost than piecemeal construction by individual roads regardless of the problem as a whole. If the three steam roads now had satisfactory facilities, this argument would be less important. Under existing conditions, it is of prime importance.

(5) The topographical conditions and location of the railroads in Los Angeles are almost ideal and point definitely towards a union station. These natural conditions are such that a union station can be created with comparatively inexpensive connections between the roads at a relatively small capital expenditure. Long and costly approaches are eliminated and there is no doubt that the first cost will be relatively much smaller than for a similar undertaking in other communities of equal importance in the United States.

The principal arguments against the establishment of a union station are:

(1) Los Angeles is not a through station. Practically all trains entering the city terminate there, and it is there that the majority of the passengers reach their destination. Only approximately 15 per cent of the total number of passengers transfer from one station to another.

(2) The first cost of any adequate union passenger terminal will be high and the saving in operating expenses will not alone warrant the resulting increase in fixed charges.

These points are discussed in detail in the report and the conclusion is reached that, taking all arguments into consideration, a union station is desirable, provided it is suitably located. Three locations were considered worthy of consideration and detailed analysis by the engineers making the investigation: The Plaza site, the Santa Fe site and the Southern Pacific site. A fourth, and what

might be termed the Salt Lake site on the east bank of the Los Angeles River, was suggested after the completion of the engineering investigation. The arguments for this fourth site are general and no data are before the Commission sufficiently adequate or detailed to permit of any comparison in estimates of this site with the other three. It is apparent, however, that the location on the other side of the river from the main portion of the city is a serious disadvantage, and it is also apparent that there would be opposition on the part of the city authorities and of other [fol. 76] parties to that location.

Detailed estimates and exhaustive comparative studies were made by the Commission's engineers for each of the three investigated sites. Plans for track layouts and other facilities were drawn and careful investigation was made in each case of the additional lands and other facilities required for each site, and of the lands and other facilities that would be released and become non-operative property in each instance. This information is available in Commission's Exhibit No. 1. The advantages and disadvantages of each of the three sites were set forth and the effect on cost and and operation was considered. Recommendation is made to the Commission that a union passenger station at the Plaza site be established substantially in accordance with the plans contained in Commission's Exhibit No. 1, and the reasons for the selection of that site are stated as follows:

(1) Size and Shape of Site.—The Plaza site is much wider and longer than the Southern Pacific Station site and is equal to the Santa Fe site, which is too large.

(2) Greater Architectural and Aesthetic Possibilities.—Civic pride and the advertising value of this feature is of particular significance to a tourist center. At the Plaza, a suitable park to set off the station is possible with least damage to business, and at least cost, and at the intersection of important streets. The Santa Fe freight station interferes at the Santa Fe site, which has the least possibilities in this respect.

(3) Ultimate Rapid Transit.—The Plaza site is on a more probable axis of the ultimate rapid transit system which would be nearer and more convenient to the station

than with either the Southern Pacific or the Santa Fe plans. More interurban passengers would pass the Southern Pacific site than the Santa Fe site.

[fol. 77] (4) Because of the separation of passenger tracks from the future main switching leads along the west bank of the river, there would be less interference with switching with the Plaza plan than with the Santa Fe plan, which presents bad operating conditions because of too much traffic in one place. The Plaza plan is nearly equal to the Southern Pacific plan in this respect.

(5) Least Train Coach Equipment and Light Engine Mileage.—The Plaza site is very superior to the other sites, largely due to the location at a more northerly point. The Southern Pacific plan is worst in this respect.

(6) Union Freight Station.—The Santa Fe site is particularly suitable for a union freight station, which is possible either with the Plaza or the Southern Pacific plans. The Plaza plan is equal to the Southern Pacific plan and both are better than the Santa Fe plan.

(7) Grade-crossing Separation.—With the Plaza plan, no elevated railway structures are necessary in uptown district or awkward subway and crossings in a very important thoroughfare, as with the Southern Pacific plan. The Plaza plan is nearly equal to the Santa Fe plan.

(8) Accessibility by Street-car Lines.—Sixty per cent of the passengers use the street cars. With the Plaza plan more are accommodated without transfer than at the Southern Pacific or the Santa Fe sites. In this respect the Southern Pacific site is more convenient than the Santa Fe site.

(9) Distribution and Collection of Mail and Express.—The Plaza site is nearly as good as the Southern Pacific site. The Santa Fe site is farther and less accessible than either.

(10) Operation of Yard and Coach Yard.—The Plaza site is better than the Santa Fe site because of the proximity of the coach yard, notwithstanding the fact that a [fol. 78] through station is possible at the latter site. The Southern Pacific site is the worst as the coach yard is distant a stub station is necessary and the aproach is on a steep grade.

(11) Property Values.—Considering ultimate appreciation and neglecting immediate disturbances, the Plaza plan

is far superior and the Southern Pacific plan is far better than the Santa Fe plan. The ultimate appreciation with the station at the Plaza site and a union freight station at the Santa Fe site is estimated at over $8,000,000. This is of advantage to the city in the restoration of depreciated property values.

(12) Convenient to Hotel, Business, and Shopping Districts.—The Plaza site is slightly less convenient than the Southern Pacific site, which is much superior to the Santa Fe site.

(13) Accessibility by Automobiles.—The Plaza site is superior to the Southern Pacific site from all points except the business district where the inferiority is slight. Both are better than the Santa Fe site.

(14) Locomotive Service and Repair Facilities.—This is partly covered in No. 5. Otherwise the Plaza site is first, the Santa Fe second, and the Southern Pacific third with respect to use of present facilities and construction of new facilities.

(15) Freight Draying.—The Plaza site is best inasmuch as passenger and freight vehicle traffic is separated. The Santa Fe site is worst since both classes would be in the same district.

(16) Confinement of Transportation Facilities to Natural Channel—the Banks of the Los Angeles River.—The departure of the Plaza site is not of great importance be- [fol. 79] cause of location and improvements. The Santa Fe site is slightly better than the Plaza site and much better than the Southern Pacific site.

(17) Release of Lands in Industrial District.—Arranged in order of benefit, the three plans compare as follows: Plaza—Release Southern Pacific station and coach yard sites. Santa Fe—Release Southern Pacific station site; use coach yard for team tracks. Southern Pacific—Release coach yard site.

(18) Segregation of Freight and Passenger Routes.—This is best accomplished by the Southern Pacific plan, but the Plaza plan is not much inferior. The Santa Fe puts both passenger traffic and freight switching along the west bank and is in this way far inferior in this respect.

These and other considerations are discussed in the exhibit.

More thought and study have been given to the selection of a site for a union passenger terminal, because of the clash of contending interests, than to any other feature of the entire transportation investigation. The availability of the various sites was tested against a set of general requirements which it is acknowledged are essential to the location of any union passenger depot. While it is true that there may be varying degrees of importance placed on different requirements, it is also true that a better and fairer judgment of the availability of a particular site can be reached in this manner than by depending alone on the arguments of the party whose interest is immediately affected.

We reach the conclusion from a careful consideration of all the evidence before us that the establishment of a union passenger depot is feasible and desirable, and is necessary [fol. 80] in Los Angeles, and we are satisfied that the so-called Plaza location is superior to other possible locations and that the union passenger station should be located at that site. We come to that conclusion without subscribing on all points to the conclusions reached by our engineers in Commission's Exhibit No. 1 and in the testimony given by witnesses on that point, and without agreeing entirely with all the reasons given by the engineering conference when they, in part, indorse the report of the Commission's engineers, or with the report of the mayor's and city council's advisory committee.

The opposition on the part of the Southern Pacific, Salt Lake, and Pacific Electric Railroads, to the Plaza site, apart from the question of cost, is readily understood. The representatives of these roads have frankly admitted that they are in opposition to any plan that will interfere with the consummation of their own proposal, which provides for a partial union passenger terminal on the present Southern Pacific depot site. It is to be noted, however, that even these railroads are not opposed to terminal unification per se; rather are they in favor of it. They do not desire, however, to depart from their own plans and hold their individual and immediate interests paramount.

The Commission finds as a fact that public necessity and convenience demand a unification of passenger terminal facilities in Los Angeles and an order will be made requiring

the interested carriers to prepare, within a reasonable time, detailed plans and estimates for an adequate union passenger station at the so-called Plaza site. The exact location of the site cannot be prescribed at this time except to the extent that the union passenger station shall be located [fol. 81] in the territory in the city of Los Angeles bounded by Commercial street, North Main street, Redondo street, Alhambra avenue and the Los Angeles River.

We are not prepared, at this time, to make a finding as to the minimum amount of expenditure that should be estimated and provided for in the construction of such a station, and are of the opinion that this matter should be left for subsequent decision. Neither do we believe it wise or necessary to insist that the plans for such a station, with its necessary facilities, should follow exactly and in detail the plans set forth in Commission's Exhibit No. 1. As a result of the engineering conference, and of the last hearings before the Commission, some important and some minor changes were made, or agreed to, in the plans first suggested by our engineers, and it is certain that other modifications and changes will develop with further study. We are also satisfied that a plan can be made that will overcome the difficulties suggested during the last hearings by the railroads and by the representative of the Business Men's Association. The Los Angeles city authorities must, of necessity, have an important part in the design of any definite plan and a modification of the plan in Commission's Exhibit No. 1 may have to come about if it should definitely develop that the city is unwilling to vacate the necessary portions of streets and the Plaza.

The Commission, in reaching its conclusion that the union passenger depot should be located at the Plaza site, assumes that the city will carry out its repeatedly announced intention to further in every possible way the consummation of the general plan which, by resolution, the city authorities have so strongly urged the Commission to promulgate in this proceeding.

It remains to provide for suitable machinery and proce- [fol. 82] dure to accomplish the end sought. As an initial step it will be necessary for the interested carriers to submit for the approval of the Commission detailed plans and estimates of the proposed union passenger terminal. The plans

and estimates made by the carriers should be concurred in, or suggestions for modifications should be made, by the city. The Commission will not desire to approve or modify a plan until the plan fulfills, as nearly as may be, the joint and combined needs and desires of the interested parties. In view of the wide divergence on this subject, by the carriers themselves on the one hand and between the carriers and the city on the other hand, it is not reasonable to expect that an agreement will be reached on a plan or design if the matter is left to the individual action of these parties.

We are of the opinion, therefore, that the carriers should appoint an engineering committee, with a chairman who shall be satisfactory to the carriers, to the city of Los Angeles, and to the Commission. The city of Los Angeles should be also represented on this engineering committee.

Instructions are to be given to this engineering committee to prepare within the time specified by the Commission such plans and estimates as will completely and in good faith meet the requirements for a union passenger station laid down in this opinion and order. In case of disagreement by the engineering committee on any matter properly before the committee, and connected with the design and estimates of the plan, the decision of the chairman of the committee shall govern, with the understanding that each party shall have the right to present to the Commission its views when the plan and estimate is submitted to the Commission for final approval, as provided for in this decision.

It is not our intention that an engineer of the Commission [fol. 83] should be a party to this conference but there can, of course, be no objection to the engineering conference keeping in close touch with the Commission, and the Commission's engineering department, in order that no delay or conflict may result from misunderstanding.

The engineering committee should also handle the preparation of the plans and estimates for the grade crossing eliminations heretofore discussed in this opinion.

[fol. 84] The Commission is aware that such important questions as a division of cost of the proposed union terminal, the method of its financing and construction, provision for its operation, and other important legal, financial, and operating matters must have careful consideration and that conclusions must be reached on such questions. It would

serve no purpose, however, in our opinion, to deal with these matters at this time, and they will be left for further decision after plans and estimates have been submitted and approved.

(d) Electric Railway Transportation

Two electric railways are affected by this proceeding—The Pacific Electric and the Los Angeles Railway.

The Los Angeles Railway operates the street car system (narrow gauge). It is of importanee that arrangements should be possible to give adequate street car service to the proposed union passenger station and no difficulties will be encountered in that respect with the proposed Plaza location. The carrying out of the passenger terminal plan will result in some slight rerouting of car lines, but it is to be noted that, from the standpoint of street railway traffic, a union passenger station at the Plaza site will be favorably located. Commission's Exhibit No. 1 contains the recommendation that, to avoid street car congestion near the site of the Plaza terminal a sub-tunnel under the present Broadway tunnel be constructed. This matter appears to require further study and will be a proper subject to refer to the proposed engineering committee.

The Los Angeles Railway will also, to some extent, be interested in and affected by a number of the grade crossing separations proposed in the general plan.

[fol. 85] Plans affecting the Pacific Electric system and interurban electric rapid transit form an important part of these cases. An appreciation of the importance of the Pacific Electric service may be had when it is stated that, in 1918, approximately 68,000,000 passengers were carried on that system divided about equally between interurban and local passengers and, in 1917, this road carried 65,000,000 passengers, while in the same year the steam roads of the entire State of California carried only 39,000,000.

The Pacific Electric is also an important freight carrier, its importance as a freight road being exceeded by only two California railroads, the Southern Pacific and the Santa Fe. It should be stated in this connection that the Pacific Electric is a subsidiary of the Southern Pacific, and the latter company controls the former through stock ownership. It is apparent that the proper development of this electric

road is of vital importance to the well being of the communities interested in these proceedings.

In Commission's Exhibit No. 1, the Pacific Electric problem is dealt with at some length and recommendations are made for the construction of a subway from the present station at Sixth and Main streets northerly along Main Street to and under the Plaza union station, changing to an elevated railway along Ramirez street, and meeting the present Pacific Electric line at the Aliso street bridge. From here this line would continue as an elevated railway to Brooklyn avenue where the present tracks would be met. It is further recommended in the exhibit that the Pacific Electric continue the present elevated structure at the rear of its Main street station, elevating the Long Beach line to Fourteenth street, with provision in the design for a future connection with the subway in Sixth street. Recommendation dealing with grade separations on Pacific Electric lines have already been mentioned in connection with the discussion of grade crossings.

[fol. 86] A considerable amount of testimony other than that given by the Commission's engineers was introduced relative to the Pacific Electric and the company's president, Mr. Paul Shoup, gave testimony opposing a subway on Main street. He declared in favor of the method of dealing with Pacific Electric traffic proposed in the Southern Pacific-Salt Lake-Pacific Electric plan.

As long ago as 1911, the necessity and desirability of a north and south subway in the congested part of the city, located on Broadway, Spring, or Main streets, and an east and west subway, making a connection between the Pacific Electric Hill and Main street stations, were recognized by Mr. Bion J. Arnold in his report upon the transportation problem in Los Angeles. The Commission's engineers appear to be of the opinion that the construction of a north and south subway on Main street is of greater urgency than an east and west subway. This view is endorsed by the engineering conference. It is apparent, however, that the building of any subway is not an immediate practical possibility and it is urged upon the Commission (and there seems to be no disagreement with that proposition) that the most pressing Pacific Electric traffic problems cannot find their solution in the immediate*ly* construction of subways in the heart of the city and that means must be found

to take care of the traffic congestion on Hill street and on the Hollywood line. The Commission is at this time engaged in a study of the specific Pacific Electric traffic and operating problems, and it may be expected that a more detailed analysis of the matters here discussed will be made in connection with that investigation. We believe, therefore, that a definite order requiring operating changes or new construction from the Pacific Electric, or permitting that company to make material changes, should not be made in this decision.

[fol. 87] (e) Cost Estimates

Cost estimates in considerable detail are included in Commission's Exhibit No. 1. These estimates in that exhibit are of the years 1916 to 1918. The results were objected to by the railroads as not reflecting actual conditions at the time of the later hearings in these proceedings and the Commission asked the engineering conference to check and criticise the estimates and to revise the cost to a later date. This was done and in Commission's Exhibit No. 2 (Report of Engineering Conference, dated August 13, 1920), the estimated costs are as of March, 1920. As might be expected, there is not, however, agreement on estimates of cost of the various plans proposed in Commission's Exhibit No. 1 and their modifications.

The further fact should not be lost sight of that important changes in labor and material costs have occurred since March, 1920, and further important changes may confidently be expected in the future. On the whole, it may be said that the 1916 to 1918 costs were abnormally high and that the engineering conference costs, as of March, 1920, represented the approximate peak. Since then and speaking generally, the estimate totals for the work contemplated in Commission's Exhibits Nos. 1 and 2 will have shown a decline. There is also objection on the part of the Commission's engineers to certain overhead cost estimates and to certain real estate valuations as used by the engineering conference.

In order to comprehend the items included in the general plan discussed in this proceeding and proposed in Commission's Exhibit No. 1, a comparison of the estimates as made by the Commission's engineers, on the basis of

Table I

Estimated New Money Required for Union Passenger Station at Plaza and Other Improvements Proposed in Commission's Exhibit No. 1, Showing Estimates as Made by Com
on 1916 to 1918 Costs and Estimates as Revised by Engineering Conference as of March, 1920 (Ultimate Plan)

Est. Sec.	Group	Item	Physical construction (1)		Acquisition of property: Land		Acquisition of property: Improvements		Property damage	
			R. R. Com.	Est. Com.	R. R. Com.	Est. Com.	R. R. Com.	Est. Com.	R. R. Com.	Est. Com.
	1	Passenger terminal approaches, etc.:								
CB		Depression S. P. tracks, Alhambra ave	$71,279	$164,843	$87,075	$87,075	$7,548	$13,752	.....	.....
CC		New viaduct, North Main st	292,226	532,436	.....	.....	.....	.....	$67,310	$122,639
CE		New viaduct, Macy st	400,070	728,928	218,411	218,411	80,469	146,615	31,951	58,215
CF		New passenger terminal	4,136,261	6,101,485	3,480,778	3,480,778	1,048,194	1,909,809	.....	.....
CG		Sub-tunnel under Broadway tunnel	381,920	595,858	.....	.....	.....	.....	.....	.....
		Totals	$5,281,756	$8,223,550	$3,786,264	$3,786,264	$1,136,211	$2,070,176	$99,261	$180,854
CA	2	Union coach yard	$543,760	$1,230,698	$20,857	$20,857	$65,093	$118,599	.....	.....
CJ	4	Union freight station	$2,394,404	$5,456,569	.....	.....	$181,538	$330,762	.....	.....
	5	Viaducts over Los Angeles River:								
F		Baker st. approach to N. Broadway bridge	$111,051	$532,335	.....	.....	.....	.....	.....	.....
G		Removal North Spring st. bridge	.....	.....	.....	.....	.....	.....	.....	.....
H		New viaduct, Main st	433,669	790,509	$17,159	$17,159	.....	.....	$92,056	$167,726
M		New viaduct, Macy st	321,383	585,560	5,679	5,679	.....	.....	30,495	55,562
R		New viaduct, Fourth st	773,165	1,408,707	46,488	46,488	.....	.....	36,632	66,744
Q		New viaduct, First st	374,559	682,446	.....	.....	.....	.....	15,650	28,514
T		New viaduct, Aliso st	347,785	633,664	.....	.....	.....	.....	69,151	125,993
U		New viaduct, Seventh st	426,275	776,673	.....	.....	.....	.....	141,316	257,478
CN		New viaduct, Ninth st	369,464	673,163	.....	.....	.....	.....	45,955	83,730
		Totals	$3,157,551	$5,753,057	$69,326	$69,326	.....	.....	$431,255	$785,747
	6	Depression of, and new, tracks along river:								
D		Connections east end Humboldt st. bridge	$41,256	$109,694	$11,363	$11,363	$7,222	$13,158	.....	.....
E		Connections west end Humboldt st. bridge	23,479	34,089	.....	.....	.....	.....	.....	.....
I		Depression Alhambra ave., east of river	45,983	110,482	.....	.....	.....	.....	.....	.....
K		Depression and double tracking S. L. tracks	271,389	1,004,292	29,407	29,407	27,806	50,662	$25,000	$45,550
N		Removal Sta. Fe crossings, Macy & Aliso sts	1,047	1,265	.....	.....	.....	.....	.....	.....
W		Depression Sta. Fe tracks south of Ninth st	201,272	151,904	.....	.....	.....	.....	.....	.....
CH		Depression Santa Fe tracks, Bdwy. to Aliso	92,783	528,922	98,205	98,205	15,471	28,188	.....	.....
CL		Depression Santa Fe tracks, 7th to 9th sts	46,227	85,696	.....	.....	.....	.....	.....	.....
		Totals	$723,436	$2,026,344	$138,975	$138,975	$50,499	$92,008	$25,000	$45,550
	8	New tracks S. P., east bank of river, north of Humboldt st.:								
B		New approach, Los Feliz road bridge	$67,272	$122,570	.....	.....	.....	.....	.....	.....
O		New tracks, Humboldt to Dayton, east bank	138,070	328,088	$31,274	$31,274	$4,120	$7,507	.....	.....
J		New connection, S. P. & S. L., Alhambra ave.	39,895	34,531	18,741	18,741	5,866	10,688	.....	.....
		Totals	$245,237	$485,789	$50,015	$50,015	$9,986	$18,195	.....	.....
	9	Butte st. trackage and Santa Fe ave. subway:								
K		Tracks, Butte st., Alameda st. to river	$90,186	$210,127	$3,716	$3,716	$3,356	$6,115	.....	.....
Y		New connection, Alameda to Butte sts	29,712	56,827	18,604	18,604	9,457	17,231	.....	.....
AA		Santa Fe ave. subway	37,860	82,842	.....	.....	.....	.....	.....	.....
		Totals	$157,758	$349,796	$22,320	$22,320	$12,813	$23,346	.....	.....
	10	New trackage, river to Hobart & connections:								
Z		New bridge and wye, east of river	$269,218	$411,110	$49,405	$49,405	$3,501	$6,379	.....	.....
AC		Sec. track north present Santa Fe main line	31,510	51,319	.....	.....	.....	.....	.....	.....
AD		Connection at Hobart, Sta. Fe & Salt Lake	41,200	26,443	6,310	6,310	.....	.....	.....	.....
		Totals	$341,928	$488,872	$55,715	$55,715	$3,501	$6,379	.....	.....
	11	New freight yards, S. P. and Santa Fe:								

Table I

ey Required for Union Passenger Station at Plaza and Other Improvements Proposed in Commission's Exhibit No. 1, Showing Estimates as Made by Commission Engineers Based on 1916 to 1918 Costs and Estimates as Revised by Engineering Conference as of March, 1920 (Ultimate Plan)

Item	Physical construction (1)		Acquisition of property: Land		Acquisition of property: Improvements		Property damage		Total	
	R. R. Com.	Est. Com.	R. R. Com.	Est. Com.	R. R. Com.	Est. Com.	R. R. Com.	Est. Com.	R. R. Com.	Est. Com.
er terminal approaches, etc.:										
ssion S. P. tracks, Alhambra ave	$71,279	$164,843	$87,075	$87,075	$7,548	$13,752	.....	.....	$165,902	$265,670
iaduct, North Main st	292,226	532,436	.....	.....	.....	.....	$67,310	$122,639	359,536	655,075
iaduct, Macy st	400,070	728,928	218,411	218,411	80,469	146,615	31,951	58,215	730,901	1,152,169
passenger terminal	4,136,261	6,101,485	3,480,778	3,480,778	1,048,194	1,909,809	.....	.....	8,665,233	11,492,072
nnel under Broadway tunnel	381,920	595,858	.....	.....	.....	.....	.....	.....	381,920	695,858
Totals	$5,281,756	$8,223,550	$3,786,264	$3,786,264	$1,136,211	$2,070,176	$99,261	$180,854	$10,303,492	$14,260,844
coach yard	$543,760	$1,230,698	$20,857	$20,857	$65,093	$118,599	.....	.....	$629,710	$1,370,154
reight station	$2,394,404	$5,456,569	.....	.....	$181,538	$330,762	.....	.....	$2,575,942	$5,787,331
over Los Angeles River:										
st. approach to N. Broadway bridge	$111,051	$532,335	.....	.....	.....	.....	.....	.....	$111,051	$202,335
al North Spring st. bridge	.....	.....	.....	.....	.....	.....	.....	.....	.....	.....
iaduct, Main st	433,669	790,509	$17,159	$17,159	.....	.....	$92,056	$167,726	543,084	975,394
iaduct, Macy st	321,383	585,560	5,679	5,679	.....	.....	30,495	55,562	367,557	646,801
iaduct, Fourth st	773,165	1,408,707	46,488	46,488	.....	.....	36,632	66,744	856,285	1,521,939
iaduct, First st	374,559	682,446	.....	.....	.....	.....	15,650	28,514	390,209	710,960
iaduct, Aliso st	347,785	633,664	.....	.....	.....	.....	69,151	125,993	416,936	759,657
iaduct, Seventh st	426,275	776,673	.....	.....	.....	.....	141,316	257,478	567,591	1,034,451
iaduct, Ninth st	369,464	673,163	.....	.....	.....	.....	45,955	83,730	415,419	756,893
Totals	$3,157,551	$5,753,057	$69,326	$69,326	.....	.....	$431,255	$785,747	$3,658,132	$6,608,130
ion of, and new, tracks along river:										
ctions east end Humboldt st. bridge	$41,256	$109,694	$11,363	$11,363	$7,222	$13,158	.....	.....	$59,841	$134,215
ctions west end Humboldt st. bridge	23,479	34,089	.....	.....	.....	.....	.....	.....	23,479	34,089
ssion Alhambra ave., east of river	45,983	110,482	.....	.....	.....	.....	.....	.....	45,983	110,482
ssion and double tracking S. L. tracks	271,389	1,004,292	29,407	29,407	27,806	50,662	$25,000	$45,550	353,602	1,129,911
val Sta. Fe crossings, Macy & Aliso sts	1,047	1,265	.....	.....	.....	.....	.....	.....	1,047	1,265
ssion Sta. Fe tracks south of Ninth st	201,272	151,904	.....	.....	.....	.....	.....	.....	201,272	151,904
ssion Santa Fe tracks, Bdwy. to Aliso	92,783	528,922	98,205	98,205	15,471	28,188	.....	.....	206,459	655,315
ssion Santa Fe tracks, 7th to 9th sts	46,227	85,696	.....	.....	.....	.....	.....	.....	46,227	85,696
Totals	$723,436	$2,026,344	$138,975	$138,975	$50,499	$92,008	$25,000	$45,550	$937,010	$2,302,877
cks S. P., east bank of river, north of oldt st.:										
approach, Los Feliz road bridge	$67,272	$122,570	.....	.....	.....	.....	.....	.....	$67,272	$122,570
tracks, Humboldt to Dayton, east bank	138,070	328,088	$31,274	$31,274	$4,120	$7,507	.....	.....	173,464	367,469
connection, S. P. & S. L., Alhambra ave.	39,895	34,531	18,741	18,741	5,866	10,688	.....	.....	64,502	63,960
Totals	$245,237	$485,789	$50,015	$50,015	$9,986	$18,195	.....	.....	$305,238	$553,999
. trackage and Santa Fe ave. subway:										
s, Butte st., Alameda st. to river	$90,186	$210,127	$3,716	$3,716	$3,356	$6,115	.....	.....	$97,258	$219,958
connection, Alameda to Butte sts	29,712	56,827	18,604	18,604	9,457	17,231	.....	.....	57,773	92,662
Fe ave. subway	37,860	82,842	.....	.....	.....	.....	.....	.....	37,860	82,842
Totals	$157,758	$349,796	$22,320	$22,320	$12,813	$23,346	.....	.....	$192,891	$395,462
ckage, river to Hobart & connections:										
bridge and wye, east of river	$269,218	$411,110	$49,405	$49,405	$3,501	$6,379	.....	.....	$322,124	$466,894
rack north present Santa Fe main line	31,510	51,319	.....	.....	.....	.....	.....	.....	31,510	51,319
ction at Hobart, Sta. Fe & Salt Lake	41,200	26,443	6,310	6,310	.....	.....	.....	.....	47,516	32,753
Totals	$341,928	$488,872	$55,715	$55,715	$3,501	$6,379	.....	.....	$401,144	$550,966
eight yards, S. P. and Santa Fe:										
s, San Fernando road	$1,878,157	$4,036,017	.....	.....	.....	.....	.....	.....	$1,878,157	$4,036,017

		...new bridge and wye, east of river.....	$208,218	$411,110	$49,405	$49,405	$3,501	$6,379	.....	.....	$3
A C		Sec. track north present Santa Fe main line..	31,510	51,319	.....	.....	.....	.....	.....	.....	
A D		Connection at Hobart, Sta. Fe & Salt Lake..	41,200	26,443	6,310	6,310	.....	.....	.....	.....	
		Totals	$341,928	$488,872	$55,715	$55,715	$3,501	$6,379	.....	.....	$4
	11	New freight yards, S. P. and Santa Fe:									
A		New S. P. yards, San Fernando road.....	$1,878,157	$1,036,017	.....	.....	.....	.....	.....	.....	$1,8
O		New Santa Fe yards, east of Hobart.....	957,030	1,203,376	.....	.....	.....	.....	.....	.....	$
		Totals	$2,835,187	$5,239,393	.....	.....	.....	.....	.....	.....	$2,8
	12	New freight terminal, Salt Lake. Nothing.									
P	13	New connections, relief Alameda st. switching..	$4,436	$6,012	.....	.....	.....	.....	.....	.....	
	14	Team yards:									
A O		New yard, Salt Lake terminal, Hunter st.....	$395,537	$440,006	*$91,481	*$91,481	.....	.....	.....	.....	$
A T		New yard, Los Angeles Market property.....	176,694	321,936	.....	.....	.....	.....	.....	.....	
C D		New yard, S. P. freight station site.....	50,155	220,507	.....	.....	$98,116	$178,767	.....	.....	
		Totals	$622,386	$982,449	*$91,481	*$91,481	$98,116	$178,767	.....	.....	$
S	16	Release S. P. station site.....	*$96,840	*$176,442	*1,719,918	*1,719,918	573,104	1,044,196	.....	.....	*1,1
V	17	Release S. P. coach yard site.....	*$44,964	*$81,924	*$1,651,262	*$1,651,262	$121,844	$222,000	.....	.....	*$1,3
		Electric roads—									
	20	New line P. E. station to Brooklyn ave.-14th st.									
C K		Removal and reconstruction P. E. L. A. and First sts.....	$39,074	$63,070	.....	.....	.....	.....	.....	.....	
C M		Main st. subway.....	3,757,251	6,388,752	$97,405	$97,405	$26,160	$47,664	.....	.....	3,4
D R		Double tracking P. E. elevated.....	1,092,114	1,780,019	482,030	482,030	97,446	178,547	.....	.....	1,2
		Totals	$4,888,439	$8,231,841	$579,435	$579,435	$123,606	$226,211	.....	.....	$5,0
	21	New surface lines to proposed Union station....	Nothing.								
	22	Freight tracks:									
L		Macy st. and river to Echandia yard.....	$110,146	$171,911	$31,246	$31,246	.....	.....	.....	.....	$
A B		Raise transfer track, Santa Fe and Butte st..	8,694	69,908	.....	.....	.....	.....	.....	.....	
		Totals	$118,840	$241,819	$31,246	$31,246	.....	.....	.....	.....	$
		Grand totals.....	$21,173,314	$38,457,823	$1,291,492	$1,291,492	$2,376,311	$4,330,638	$555,516	$1,012,151	$25,0

*Credits.

(1) Est. Com.=Estimate Committee of Engineering Conference

NOTE.—The difference between the grand total "ultimate expenditure for all recommendations" of $32,233,445, mentioned on page 11 of this decision, and the grand total of $2 table, is accounted for by the exclusion from Table I of two items:

1. Reconstruction, joint use, and grade crossing elimination of Santa Fe and Salt Lake lines between Los Angeles and Pasadena.....
2. Pairing of Southern Pacific-Salt Lake tracks between Los Angeles and Colton.....

Total .....

...ridge and wye, east of river	$288,218	$411,110	$49,405	$49,405	$3,501	$6,379	.....	.....	$322,124	$466,894
...rack north present Santa Fe main line	31,510	51,319	.....	.....	.....	.....	.....	.....	31,510	51,319
...ection at Hobart, Sta. Fe & Salt Lake	41,200	26,443	6,310	6,310	.....	.....	.....	.....	47,516	32,753
Totals	$341,928	$488,872	$55,715	$55,715	$3,501	$6,379	.....	.....	$401,144	$550,966
...eight yards, S. P. and Santa Fe:										
...S. P. yards, San Fernando road	$1,878,157	$1,036,017	.....	.....	.....	.....	.....	.....	$1,878,157	$4,036,017
...Santa Fe yards, east of Hobart	957,030	1,203,376	.....	.....	.....	.....	.....	.....	957,030	1,203,376
Totals	$2,835,187	$5,239,393	.....	.....	.....	.....	.....	.....	$2,835,187	$5,239,393
...eight terminal, Salt Lake. Nothing.										
...nnections, relief Alameda st. switching	$4,436	$6,012	.....	.....	.....	.....	.....	.....	$4,436	$6,012
...ards:										
...yard, Salt Lake terminal, Hunter st	$395,537	$440,006	*$91,481	*$91,481	.....	.....	.....	.....	$304,056	$348,525
...yard, Los Angeles Market property	176,694	321,936	.....	.....	.....	.....	.....	.....	176,694	321,936
...yard, S. P. freight station site	50,155	220,507	.....	.....	$98,116	$178,767	.....	.....	148,271	399,274
Totals	$622,386	$982,449	*$91,481	*$91,481	$98,116	$178,767	.....	.....	$639,021	$1,069,735
...S. P. station site	*$96,840	*$176,442	*1,719,918	*1,719,918	573,104	1,044,196	.....	.....	*1,243,654	*852,165
...S. P. coach yard site	*$44,964	*$81,924	*$1,651,262	*$1,651,262	$121,844	$222,000	.....	.....	*$1,574,382	*$1,511,186
...lectric roads—										
...e P. E. station to Brooklyn ave.-14th st.										
...val and reconstruction P. E. L. A. and										
...st sts	$39,074	$63,070	.....	.....	.....	.....	.....	.....	$39,074	$63,070
...st. subway	3,757,251	6,388,752	$97,405	$97,405	$26,160	$47,664	.....	.....	3,880,816	6,533,821
...e tracking P. E. elevated	1,092,114	1,780,019	482,030	482,030	97,446	178,547	.....	.....	1,671,590	2,440,596
Totals	$4,888,439	$8,231,841	$579,435	$579,435	$123,606	$226,211	.....	.....	$5,591,480	$9,037,487
...face lines to proposed Union station	Nothing.									
...tracks:										
...st. and river to Echandia yard	$110,146	$171,911	$31,246	$31,246	.....	.....	.....	.....	$141,392	$203,157
...transfer track, Santa Fe and Butte st	8,694	69,908	.....	.....	.....	.....	.....	.....	8,694	69,908
Totals	$118,840	$241,819	$31,246	$31,246	.....	.....	.....	.....	$150,086	$273,065
Grand totals	$21,173,314	$38,457,823	$1,291,492	$1,291,492	$2,376,311	$4,330,638	$555,516	$1,012,151	$25,396,633	$45,092,104

(1) Est. Com.=Estimate Committee of Engineering Conference.

...erence between the grand total "ultimate expenditure for all recommendations" of $32,233,445, mentioned on page 11 of this decision, and the grand total of $25,396,633 given in this ...or by the exclusion from Table I of two items:

...n. joint use, and grade crossing elimination of Santa Fe and Salt Lake lines between Los Angeles and Pasadena	$6,700,000
...uthern Pacific-Salt Lake tracks between Los Angeles and Colton	136,812
...	$6,836,812

prices of 1916 to 1918, and as revised by the engineering conference on the basis of prices of March, 1920, is shown in the following Table No. I. It should be remembered that Table I provides for what is termed the "ultimate plan". The table is included in this decision, not for the purpose of showing what would appear to the Commission to be estimates of sufficient exactness to base thereon a division of cost but merely to give an indication of the scope of the proposed development.

(Here follows Table I, side folio 88)

[fol. 89] The construction contemplated in Table I will be spread over a period of probably not less than ten years and the work will of necessity have to be done in successive steps. The first step provided for in this order, and extending over a period of probably five years, embraces, it will be noted, a beginning of the most important grade crossing separations, a beginning in the establishment of a union passenger terminal with the accompanying relief of Alameda street, and certain other measures making for greater simplicity and economy in railroad operation. The cost of this first step will, of course, be much less than the total estimate. The approximate cost figure will be known after the plans of the engineering committee have been filed with the Commission.

It must be remembered that the present passenger stations of the Salt Lake and of the Santa Fe are acknowledged by these roads to be inadequate and unsatisfactory and, further, that large expenditures are necessary and now contemplated by the three steam railroads and by the Pacific Electric in meeting their urgent passenger and freight requirements. The Southern Pacific-Salt Lake-Pacific Electric plan, according to Southern Pacific-Salt Lake Exhibit No. 27, contemplates the expenditure of approximately seventeen million dollars for a partial and incomplete development. It cannot be said, in view of these facts, that an unreasonably large immediate expenditure is contemplated by the Commission or that we are not giving consideration to the important factor of cost in making this order.

[fol. 90] Care must be taken in making comparison between different plans and estimates that the comparison

is not between altogether unlike things. This difficulty repeatedly arose during these proceedings. The estimated cost of a partial plan manifestly cannot fairly be compared with the estimated cost of a comprehensive plan. Again, the cost of a plan to take care of present needs only cannot fairly be compared with the cost of a plan intended to provide for the present as well as the future. Again, a plan considering the requirements of several of the carriers only cannot be compared with a program designed to take care of all of the carriers as well as of the city.

When capital costs are compared, it is also necessary not to lose sight of comparative operating costs, and of operating costs not only to the railroads, but also to the users of transportation in passenger and freight traffic, and to the community.

We repeat, therefore, that it is not practicable, at this time, to deal extensively with the matter of cost and division of expenditure and that this is one of the features that should be reserved for a subsequent decision.

(f) Associated Matters

The present decision will dispose of Case No. 938 where, in Decision No. 3290, dated April 27, 1916, the Commission made its order directing the installation of a standard interlocking plant at Aliso street and Los Angeles River. According to that order plans were to be submitted and the plant placed in operation within nine months. On July 28, 1916, the effective date of Decision No. 3290 was extended and the matter has since been held in abeyance. A separation of grades for the crossings of the Pacific Electric and the main line of the Salt Lake and the river tracks of the Santa Fe, and the removal of the crossing of the present main line Santa Fe tracks, does away with [fol. 91] the necessity for this interlocking plan and this case may, therefore, be dismissed. An order will be issued by the Commission to that effect.

In Application No. 2962, the Industrial Terminal Railway Company asks permission to issue stock for the purpose of acquisition of rights of way for a switching and terminal railroad approximately two miles in length, commencing on Alameda street north of Aliso street and running in an easterly and nortwesterly direction across Ramirez street, Macy street, Lyon street and crossing the

tracks of the Santa Fe, across the Los Angeles River and across the tracks of the Salt Lake, terminating on the south side of Alhambra avenue east of the Los Angeles River. The present decision makes the construction of such a railroad an impossibility and we believe that this application should, for that reason, be dismissed without prejudice. It is our understanding that such a dismissal is satisfactory to the applicants.

In Case No. 974, the City of Pasadena is complainant and the Pacific Electric Railway Company, the Southern Pacific Company, Atchison, Topeka and Santa Fe Railway Company, the San Pedro, Los Angeles and Salt Lake Railroad Company, and the city of Los Angeles are defendants.

In this complaint the city of Pasadena alleges that certain grade crossings maintained by defendants are dangerous and should be eliminated and asks further that the Commission's order in Case No. 938 should not be carried out.

The first is the crossing of Huntington drive and the Pacific Electric, about one-third mile northeast of North Broadway and Mission road junction in the city of Los Angeles, where four Pacific Electric Railway tracks are crossed at grade. In the complaint, and in Exhibit "B" attached to the complaint, this crossing is referred to as the Mission road crossing but since in Commission's Exhibit No. 1 the crossing of the Southern Pacific tracks in [fol. 92] Alhambra avenue with Mission road is referred to as the Mission road crossing, the crossing complained of in this case will be referred to as the Huntington drive crossing. It should be here noted that the Pacific Electric Railway Company and the city of Los Angeles are the only defendants having an interest in this crossing.

As noted in Commission's Exhibit No. 1, subsequent to the filing of this formal complaint, an agreement was reached between the city of Los Angeles and the Pacific Electric Railway whereby, through the construction of a new road and the relocation of a bridge, approximately all of the present traffic over this crossing would be diverted. It was proposed, therefore, that this crossing be excluded from the general investigtion. This was done (Trans., p. 132).

On August 7, 1917, the agreement referred to was filed with the commission, it becoming city of Los Angeles Ex-

hibit No. 2 in the consolidated proceeding. No grade crossings are to be opened or closed under this agreement and the commission is not legally concerned. We may, however, take cognizance of the fact that the agreement has been carried out and the road constructed and approximately all of the traffic diverted from the crossing. No reason exists, therefore, for further consideration of this part of the complaint of the city of Pasadena.

The city of Pasadena also alleges that the grade crossings of the Pacific Electric tracks in Aliso street and the Santa Fe and Salt Lake tracks on both sides of the Los Angeles River are improper, inadequate and insufficient for the reasonable protection of the public traveling on the Pacific Electric cars and asks that these crossings be eliminated. The complaint further alleges that the order made by the Commission on April 27, 1916, in Case No. 938 for the construction of a standard interlocking plan at this crossing should not be enforced for the reason that its installation would not obviate the alleged delay at this crossing.

[fol. 93] On July 28, 1916, thirteen days subsequent to the filing of the complaint in Case No. 974, the Commission made a decision extending until further order, the effective date of its order in Case No. 938 and the matter has since been held in abeyance pending a decision in this proceeding.

We have already stated that an order will be issued separating the grades of the Pacific Electric and the Santa Fe and Salt Lake at Aliso street and Los Angeles River and if this is done it will automatically dispose of this part of the complaint in Case No. 974. Since all of the matters complained of by the city of Pasadena have been disposed of an order of dismissal without prejudice should be entered in Case No. 974. This will be done.

In Case No. 980, the city of Alhambra, in Case No. 981, the city of San Gabriel and, in Case No. 983, the city of South Pasadena make complaints almost identical with that of the city of Pasadena in Case No. 974.

For the reasons set forth above, these complaints should also be dismissed.

Summary

The conclusions reached by the Commission, after a thorough and careful investigation as indicated in this opinion may be summarized as follows:

1. Consideration of safety, public necessity and convenience, as also of operating economy and efficiency, requires the adoption of a comprehensive plan of transportation development in the territory under consideration in this proceeding, including in such a plan provision for gradual elimination of all important grade crossings on the Southern Pacific, Santa Fe, Salt Lake, and Pacific Electric, a unification of the steam railroad passenger facilities, and the construction of a union passenger station, the further development of freight facilities in accordance with principles [fol. 94] insuring the lowest cost of service to both railroads and shippers, and the development of electric interurban rapid transit doing away with present congestion and delay and through means of probable future subways in the congested portion of the city. The conclusions reached and the general recommendations made in Commission's Exhibits Nos. 1 and 2 in this proceeding may well serve as a guide to such development.

2. The general ultimate development plan, to the extent that it is advisable and possible to lay down specifications at this time, is indicated in its construction items in Table I in this opinion. This plan, of necessity, will be subject to modifications depending on changes in present conditions.

3. The accomplishment of the plan will have to be undertaken in successive steps, the character and extent to each step to be determined by the transportation needs of the community and the carriers, and by the financial condition of the parties.

4. The first step is indicated in this decision and it is estimated that the work contemplated can be completed in five years.

5. The first construction and other work to be undertaken towards the accomplishment of the first step should be as follows:

(a) Grades should be separated at Macy, Aliso and Seventh streets for reasons indicated and in the manner previously described in this decision.

(b) Relating to freight traffic, the interests of the city and of industrial development require the withholding by the city authorities of future permits for industrial tracks

longitudinally in streets; the confining of longitudinal tracks now in the streets to industrial use only and the re-[fol. 95] moval of such tracks as soon as access to the industries served can otherwise be obtained. All spur tracks should be served from the main lines on the river banks and future spur tracks should be built in a general easterly and westerly direction from the river and not across east and west streets, unless by such construction the crossing of more important north and south streets is avoided. The establishment of team yards along the east side of Alameda street is desirable in the interests of both shippers and the railroads.

(c) A union passenger station should be established and built at the Plaza site, as that site and the requirements for such a station are previously described in this decision. The construction of a union passenger depot, with its necessary facilities and the resulting changes in the Los Angeles transportation system will, in itself, because of railroad operating and other necessities, be an item of work that must be completed in successive steps and spread over a considerable period of time. Arrangements to that end will have to be worked out by a competent engineering committee representing all the parties, under the chairmanship of a competent, impartial engineer, and under rules and instructions approved or laid down by this Commission.

6. With reference to the Pacific Electric interurban and local service, definite findings of fact relating to the first step in the ultimate plan, in so far as that company is a party to these proceedings, should be held in abeyance until the investigation now being made by the Commission into the affairs of that company is completed. It is a fact, however, that the Pacific Electric's most urgent service and traffic problems dealing with the Hill street and the Hollywood situations are not affected by the present proceeding, and nothing contained in this decision will prevent or need delay a partial or complete solution of these difficulties.

[fol. 96] 7. Both the Pacific Electric and the Los Angeles Railway will have to make provision for adequate local street railway service to and from the union passenger station.

8. Other matters at issue in this proceeding will be decided in accordance with the foregoing findings of fact and opinion.

Order

Complaints having been filed by the Municipal League, Central Development Association, Civic Center Association, and the cities of Pasadena, Alhambra, San Gabriel and South Pasadena, and an application filed by Southern Pacific Railroad Company et al., and all of these complaints and said application having been consolidated in this proceeding, and an exhaustive investigation into all of the matters connected therewith having been made by the Commission, public hearings having been held and the matters submitted, the Commission now makes its findings of fact as follows:

1. That the existing grade crossings of the Southern Pacific Company's tracks on Alameda street, at College street, North Main street, Macy street, Aliso street, Commercial street, Jackson street, East First street, East Second street, East Third street, East Fourth Street, East Sixth street, Industrial street, East Seventh street, East Eighth street, East Ninth street, East Fourteenth street and East Fifteenth street, in the city of Los Angeles, are unsafe, and the continued use thereof, as a main line for the movement of trains of the said carrier, endangers the employees of the carrier and the public generally; that public interest and safety require that such dangerous conditions at said crossings be eliminated by the erection and use of a new structure or structures, to wit, a union pas- [fol. 97] senger station and buildings incidental thereto located as hereinafter designated, and by the making of additions to, extensions, improvements and changes in the existing railroad facilities of said Southern Pacific Company reasonably necessary and incidental to the use of said union passenger station.

2. That a new structure or structures, to wit, a union passenger station and buildings incidental thereto should be erected by the defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, the Los Angeles and Salt Lake Railroad Company and Pacific Electric Railway Company, to promote the security and

convenience of their employees and of the public and to secure adequate service and facilities for the performance of said defendants, and each of them of their public utility functions in the State of California; and in connection therewith additions, extensions, improvements and changes in the existing facilities of said defendants ought reasonably to be made in accordance with the general recommendations and conclusions set forth in the foregoing opinion.

3. That the location and site of the union passenger station herein referred to best suited to promote public convenience and to secure adequate service and facilities, is within that portion of the city of Los Angeles bounded by Commercial street, North Main street, Redondo street, Alhambra avenue and the Los Angeles River.

4. That certain existing grade crossing adjacent to the Los Angeles River in the city of Los Angeles, to wit, the crossing of Macy street, a public street in the city of Los Angeles, and of the tracks of the Los Angeles Railway Corporation thereon by the tracks of The Atchison, Topeka and Santa Fe Railway Company and of the Los Angeles [fol. 98] and Salt Lake Railroad Company; the crossing of Aliso street, a public street in the city of Los Angeles and of the tracks of the Pacific Electric Railway Company thereon, by the tracks of The Atchison, Topeka and Santa Fe Railway Company and of the Los Angeles and Salt Lake Railroad Company, and the crossing of Seventh street, a public street in the city of Los Angeles, and of the tracks of the Los Angeles Railway Corporation thereon, by the tracks of The Atchison, Topeka and Santa Fe Railway Company, and of the Los Angeles and Salt Lake Railroad Company are unsafe, and the continued use thereof endangers the employees of said carriers and the public generally; that a separation of grades at said crossing is practicable and should be made.

Basing its order upon said findings of fact and the further findings and statements of fact contained in the opinion preceding this order,

It is hereby ordered—

1. That said defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, Los Angeles and Salt Lake Railroad Company and Pacific Elec-

tric Railway Company, do make and construct such additions, extensions, improvements to, and changes in, their railroad facilities in the city of Los Angeles, and to erect a union passenger station and buildings incidental thereto in said city of Los Angeles; and perform such work and make and construct the necessary fills, cuts, viaducts and other works and structures necessary for a separation of grades at the crossings enumerated in paragraph 4 of the findings of fact preceding this order, all in the manner and within the time hereinafter specified in this order, and such other orders as this Commission may hereafter make, supplementary thereto.

[fol. 99] 2. The site of the union passenger station herein referred to shall be within that portion of the city of Los Angeles bounded by Commercial street, North Main street, Redondo street, Alhambra avenue and the Los Angeles River. The specific location of said station within said area will be hereafter fixed and designed, pursuant to final plans to be prepared therefor, as hereinafter provided.

3. That said defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, Los Angeles and Salt Lake Railroad Company and Pacific Electric Railway Company, and each of them, shall cause to be made and filed with this Commission complete plans, specifications and estimates for such additions, extensions, improvements and changes in facilities and such new structure or structures, separation of grades and other work, as hereinabove referred to, as follows:

(a) Relating to Grade-crossing Elimination

There shall be filed within sixty days from the date of this order a general plan or plans providing for grade separations at Macy, Aliso and Seventh streets, in conformity with the specifications, contained in the preceding opinion; also, profile or profiles, and detail drawings of each viaduct provided herein, together with estimate of cost of construction for each viaduct and for incidental expenditures and for damages; such plans, profiles, drawings and estimates to be prepared as hereinafter provided for.

(b) Relating to a Union Passenger Station

There shall be filed within six months from the date of this order a general plan, or plans, with the necessary pro-

file, or profiles, and general and detail drawings of a passenger union station located on the Plaza site, as described in the preceding opinion and findings of fact, together with all necessary facilities and changes in existing facilities; also estimates of cost of construction of the union passenger depot, together with its necessary facilities and changes in [fol. 100] existing facilities, and estimates of damages and of salvage; also, description and plans of the necessary temporary operating arrangements during the period of the transition pending the completion of new union passenger terminal facilities. All plans, profiles, drawings and estimates shall be prepared as hereinafter provided for.

The filing by said defendants jointly of such complete plans, specifications and estimates shall be deemed a compliance with this order in this particular.

4. Said defendants, and each of them, shall, within thirty (30) days from the date of this order, appoint their respective representatives—of whom there shall not be more than two (2) for each defendant—upon a joint engineering committee, which committee shall be charged with the preparation of complete plans, specifications and estimates, hereinbefore referred to. Said defendants shall also, within thirty (30) days from the date of this order, select and, subject to the approval of this Commission, appoint a disinterested engineer as chairman of said engineering committee. If no such appointment be made within the time specified herein, the Commission will, itself, select and appoint the chairman of the engineering committee. The city of Los Angeles shall be entitled to be represented upon the said engineering committee in the same manner and upon the same terms and conditions as each of said defendants.

5. The engineering committee shall prepare all plans, specifications, profiles, designs and estimates in accordance with the directions laid down in this decision, and with such further provisions as may be issued from time to time by this commission. In case of any disagreement by said committee on any matter properly before it, the decision of the chairman thereon shall be final; subject, however, to the ultimate approval of the Commission. Each party shall [fol. 101] have the right to present to the Commission its

individual views when the plans and estimates are submitted to the Commission for final approval.

6. The expense of all additions, extensions, improvements or changes in facilities and new structure or structures and other work herein ordered—other than that relating to the separation of grades, to be hereafter specifically provided for, but including the preparation of complete plans, specifications and estimates by the engineering committee—shall be at the joint cost of said defendants upon such terms, as to the apportionment and division, as they may, within a reasonable time, agree upon, which time is hereby fixed at thirty (30) days from and after the date of this order for the apportionment of cost of preparation of complete plans, specifications and estimates, and six (6) months from and after the date of this order for the apportionment of cost of all other work; and in the event of their failure to so agree, then upon such terms and in such proportions and in the manner in which the commission may, after further hearing, fix by supplemental order; provided, however, that all compensation for any representatives of the city of Los Angeles on the engineering committee shall be paid by said city.

7. Within twenty (20) days from the effective date of this order, the railroads shall file with the Commission a preliminary estimate of cost of preparing plans, specifications and estimates. After the appointment of the engineering committee, that committee shall file with the Commission weekly reports, in the form prescribed by the Commission, showing the progress of the work and the character and distribution of the work done. The engineering committee shall also keep account of its expenditures and shall file monthly reports of all expenditures with the carriers and with this Commission.

[fol. 102] It is further ordered, that the complaint of the city of Pasadena against the Pacific Electric Railway Company, the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, the Los Angeles and Salt Lake Railroad Company, and the city of Los Angeles, Case No. 974, which case is consolidated with this proceeding, relating to the grade crossing of the Pacific Electric tracks and Huntington drive and to the grade crossing of the Pa-

cific Electric tracks in Aliso street and the Santa Fe and Salt Lake tracks on both sides of the Los Angeles River be and the same hereby is dismissed without prejudice, for the reasons heretofore stated in this decision.

It is further ordered, that the complaints of the cities of Alhambra, San Gabriel and South Pasadena, in Cases Nos. 980, 981 and 983, all of which cases are consolidated with this proceeding and which complaints are identical with the complaint of the city of Pasadena in Case No. 974, hereinbefore referred to, be and hereby are dismissed for reasons controlling in Case No. 974, as hereinbefore indicated in this decision.

The effective date of this order is hereby fixed and designated as the twentieth day of May, 1921; and

It is hereby further ordered, that wherever in this order a time is fixed for the doing of any act or the compliance with any term or condition of this order, such time shall be computed from said effective date.

The Commission reserves the right to make such further order or orders in these proceedings and relating to the construction, operation, modification and abandonment of facilities, to costs and division of costs, and to all other matters relating thereto, as public safety, necessity and convenience may require, and as, in the opinion of the Commission, may be just and reasonable.

Dated at San Francisco, California, this twenty-sixth day of April, 1921.

A true copy.

H. G. Matthewson, Asst. Sec. R. R. Comm. of Calif.

[fol. 103] Appendix "A"

List of Exhibits in Case No. 970 et seq. Attached to Decision No. 8901

Filed by the Business Stability Association

Date filed	Exhibit No.	Subject
8-22 and 23-17.	1	Plaza terminal plan.

Filed by The California Railroad Commission

Date filed	Exhibit No.	Subject
2-17-20	1	Railroad grade crossing and terminal investigation report by Engineering Department, Richard Sachse.

Date filed	Exhibit No.	Subject
8-16-20	2	Report of Engineering Conference on Los Angeles grade crossing and terminal investigation, August 13, 1920.

Filed by Central Development Association

6-24-17	1	Large map of Plaza plan.
6-24-17	2	Large map of Plaza plan.
6-26-17	3	Plan of smaller proposed Plaza terminal.
8-22 and 23-17	4	Track layout of proposed Plaza terminal.
11-21-17	5	Arrangement of terminal tracks, proposed Plaza plan.
11-21-17	6	Profile of North Main street to west bank of L. A. River.
11-21-17	7	Section through Plaza terminal with double arch.
11-21-17	8	Section through Plaza terminal with single arch.

[fol. 104]

11-21-17	9	Front elevation of Plaza terminal.
11-21-17	10	Small map showing main tracks of 4 railroads and approaches.
11-21-17	11	Floor plan of terminal.
11-21-17	12	Plan at Alameda street level of terminal.
11-21-17	13	Diagram showing routes on yellow car lines serving Plaza and Fifth street station without change of cars.
11-22-17	14	Tabulation. Cost of Plaza project; cost of S. P.-S. L.-P. E. project and unit prices.
12-11-17	15A	Sketch map of S. P. station at Arcade site.
12-11-17	15B	Sketch map of Salt Lake coach track.
12-11-17	15C	Sketch map of Santa Fe's coach track.

Date filed	Exhibit No.	Subject
12-11-17	15D	Sketch map of Santa Fe station grounds.
12-11-17	15E	Sketch map of S. P. yards and shop grounds at Alhambra street.
12-11-17	16	Cost estimate of proposed Plaza terminal coach yards.
12-11-17	17	Detail of Hawgood's cost estimate shown in Exhibit No. 14.
12-11-17	18	Large map showing Storrow's revised terminal layout.
12-11-17	19	Map showing enlarged detail Plaza terminal layout.
[fol. 105]		
12-12-17	20	Blue print showing plans for Plaza station building, drawn by Curlett, to which blue print is attached memorandum of costs.
		Filed by City of Los Angeles
6-26-17	1	Profile of Los Angeles River bed.
6-26-17	2	Copy of contract between City of L. A. and P. E. Ry. Co. covering new road to divert traffic from Huntington drive crossing of P. E.
6-26-17	3	Map showing trackage and industrial spurs.
		Filed by The City Planning Association
8-22 and 23-17	1	Diagram of rapid transit lines—10-22-14.
8-22 and 23-17	2	Satelite Map—Los Angeles district.
8-22 and 23-17	3	Diagram of interurban and steam railroads.
8-17-20	4	Diagram of transportation.
		Filed by Southern Pacific and Salt Lake Railroad Companies
6-24-17	1	Map showing S. P.-S. L. plan.
6-26-17	2	Profile of S. P.-S. L. plan—Pigeon farm to Hollenbeck Ave.
6-26-17	3	Profile of S. P.-S. L. plan—L. A. River to Arcade depot.

Date filed	Exhibit No.	Subject
[fol. 106]		
6-26-17	4	Large map of proposed S. P.-S. L. passenger terminal.
8-22 and 23-17.	5	Map showing lands in Central Development Association's depot plan.
8-22 and 23-17.	6	Map showing ownerships of lands in Central Development Association's depot plan.
8-22 and 23-17.	7	Sketch of track layout in Central Development Association's depot plan.
8-22 and 23-17.	8	Plans of S. P. Arcade station—"A" to "L" inclusive.
8-22 and 23-17.	9	Plan of S. P. trackage, Macy to Sixth streets.
8-22 and 23-17.	10	Profile of North Main street.
8-22 and 23-17.	11	Profile of Macy street.
8-22 and 23-17.	12	Profile of Aliso street.
8-22 and 23-17.	13	Profile of Aliso and Anderson streets.
8-22 and 23-17.	13A.	Profile of Aliso street. N. M. 861.
8-22 and 23-17.	14	Profile of Fourth street.
8-22 and 23-17.	15	Profile of Seventh street.
8-22 and 23-17.	16	Profile of Ninth street.
8-22 and 23-17.	17	"Official Transportation and City Map of Los Angeles."
8-22 and 23-17.	18	Photograph of proposed grade crossing elimination at Sixth and Alameda streets.
11-20-17	19	Plan showing Seventh street separation of grades.
11-21-17	20	Letter of C. W. Durbrow to President Thelen, dated November 16, 1917, with 4 enclosures headed respectively "Plaza Plan; Exchange of Passenger Facilities; New Money to be spent by Southern Pacific Company; and New Money to be spent by Pacific Electric Railway Company and Salt Lake Railroad."
[fol. 107]		

Date filed	Exhibit No.	Subject
11-21-17	21	Titcomb's detailed estimate of Southern Pacific-Salt Lake plans (29 sheets).
11-21-17	22	Titcomb's estimate of cost of Barnard plan.
11-22-17	23	Salt Lake Company's first mortgage dated July 1, 1911, to Guaranty Trust Company of New York.
12-11-17	24	Profile from near Sixth street to L. A. River.
12-11-17	25	Estimate details of grade separation at Los Angeles.
8-18-20	26	Map of present S. P. station.
8-18-20	27	Comparative statement showing cost of complete grade crossing elimination between S. P.-S. L. plan and the Plaza plan.
8-18-20	28	Estimate of cost of grade crossing elimination along banks of Los Angeles River.
8-18-20	29	Blue Print—Proposed joint use of S. P. station by L. A. and S. L. Ry.
8-18-20	30	Chart showing train operation at present S. P. station.
[fol. 108]		
8-18-20	31	Joint passenger station (pamphlet).
8-18-20	32	S. P.-S. L.-P. E. plan for elimination of grade crossings.

BEFORE RAILROAD COMMISSION OF CALIFORNIA.

Cases No. 970, etc.

[fols. 109-111] [Titles omitted]

[fol. 112] DECISION No. 9838

Opinion

BY THE COMMISSION:

Decision in the above-entitled proceedings, as consolidated at the original hearing, has been heretofore rendered (Decision No. 8901). Upon the filing by all of the defend-

ants of petitions for rehearing, and after hearing and argument thereon, it became apparent that certain modifications of the original findings and order were necessary and for that purpose a rehearing was granted.

In view of the exhaustive investigation that has been made and the full and complete presentation of evidence by all parties at the former hearings, and the further fact that the Commission has viewed the premises and is thoroughly familiar with the physical conditions, it is not considered necessary to reopen the case for the taking of further evidence. At the request of the Commission, there have been filed by all parties written stipulations that all the evidence and arguments taken at former hearings might be considered as the evidence and record on hearing.

In the former opinion the facts relative to grade crossing elimination and the union passenger depot were thoroughly discussed and the reasons generally upon which the Commission based its findings were set forth. In addition to this it was deemed necessary, inasmuch as the various complainants and the City has asked the Commission to make a comprehensive investigation of the entire railroad situation in Los Angeles, to discuss all aspects of the transportation problem from the standpoint of both immediate and future needs and to include some suggestions relative to future developments, which necessarily could not be included in the order. In view of the fact that the work done and the investigation made in this case may be the basis, in part at least, for supplemental orders that may be necessary to the carrying out of the general scheme of traffic reorganization in Los Angeles asked for by complainants, all that was said [fol. 113] in the former opinion is now considered pertinent and of value herein and the same is therefore approved, except as herein modified.

It is only necessary here to consider the questions which were presented in the petitions and arguments for rehearing and in particular those which make a modification of the findings and order necessary.

1. Pacific Electric.—It is complained that as to the Pacific Electric the order is unlawful in that it requires participation in the construction of a union station and in the separation of grades at Macy and Seventh Streets whereas the evidence shows that the Pacific Electric has no interest in a

union station at all and maintains no tracks on the streets mentioned. A careful review of the record leads us to conclude that there was not sufficient evidence upon which to base the findings and order that the Pacific Electric should participate in the construction of a union terminal at the Plaza. The Pacific Electric will, therefore, be eliminated from that part of the order. As to grade crossings, it was, of course, not contemplated that the Pacific Electric should participate in any construction at crossing where it has no tracks; however, in order that there may be no misunderstanding, the order will be modified in that particular and the Pacific Electric Company will be specifically required to participate in the separation of grade crossings at Aliso Street and the Los Angeles river, in accordance with the relief asked in cases 974, 980, 981 and 983. Inasmuch as the suspension of the original order automatically suspended the dismissal of these four cases and reinstated them, that part of the order dismissing these cases will be omitted from the present order, and the decision and order herein will be the decision and order in said four cases as consolidated in the entire proceeding.

2. Grade Crossing Separation.—No special complaint was made in the petitions for rehearing or in the oral arguments [fol. 114] thereon concerning that part of the order which required the separation of grade crossings. It was admitted by all parties that the grade crossings are dangerous, and that there is abundant evidence to show that public convenience and necessity require the elimination of all the grade crossings mentioned in the order. It was stated by counsel for the Southern Pacific Company, in argument upon rehearing, that "So far as the grade crossing elimination is concerned, we have from the very beginning been frank in stating that it was the desire of carriers to fully cooperate to the fullest extent in eliminating the condition which now exists." By the filing of Application No. 3346 three of the carriers, the Southern Pacific Company, Los Angeles and Salt Lake Railroad Company, and Pacific Electric Company, practically admitted that the only effective method of eliminating the grade crossing evil from Alameda street is to remove all railroad traffic (except freight switching during limited hours) from that street. These carriers propose in this application to do this by making the

resent Southern Pacific station a partially unified terminal nd bringing trains to it by means of a trestle direct from he Los Angeles River. The Commission found, and its nding was supported by abundant evidence, that this plan id not eliminate all the grade crosisngs, and that it only rovided for a partial and unsatisfactory solution of the rminal question. The Commission was, however, also of he opinion that the only method of eliminating grade cross-gs from Alameda street is to remove all main line traffic herefrom, but found that this can only be safely, effectively nd satisfactorily accomplished by the construction of a epot at the Plaza. A review of the record convinces us hat this finding is amply supported by evidence. The for-er findings and order as to grade crossings will, therefore, emain substantially unchanged.

[ol. 115] 3. Union Terminal.—All the constitutional uestions and the questions relating to jurisdiction that ere urged by the carriers upon rehearing, relate to that art of the order requiring the construction of a union epot. Without going into an extended discussion of the uestions involved, we may say that we are satisfied that he order does not amount to a taking of private property or public use without just compensation, nor does it take roperty without due process of law, or deny defendants qual protection of the law. We are also satisfied that the ommission has full jurisdiction of the subject matter of he order and that its authority to make the order has not een taken away or impaired by Federal statutes.

It was urged by the carriers that the order requiring a nion passenger depot at the Plaza is without support in he evidence and that the Commission disregarded the evi-ence of carriers and relied exclusively upon the report of he Commission's own engineer. The Commission has ven this claim careful consideration. Five detailed plans or a union terminal were introduced in evidence by five ifferent witnesses. They were the Hawgood plan, the ernard plan, the Storrow plan, the Southern Pacific-Salt ake plan and the Sachse plan. With the exception of the outhern Pacific-Salt Lake plan, all of these plans called or a union passenger depot at the Plaza, but differed as to he exact location of the depot and the arrangement of acks, approaches, etc. In addition to these, the so-called

Arnold report was introduced and there was much other evidence, all supporting the general proposition that a union depot at the Plaza was necessary. The Commission did not rely solely on the report of its own engineer, nor did it adopt the Sachse plan in all its particulars; but, in accordance with the overwhelming preponderance of the evidence, the Commission did order a union depot at the general site of the Plaza, and left the exact location of the depot, tracks, approaches, etc. to be determined by the [fol. 116] carriers themselves, subject only to the final approval of the Commission.

That public convenience and necessity require the construction of a union depot at the Plaza is supported by abundant evidence. The very first witness who took the stand, Mr. Storrow, began by stating that any comprehensive plan for the entire elimination of grade crossings involved the construction of a new union depot, and that such a plan for grade crossing elimination was not applicable to any location for a union depot except the Plaza. Much testimony was thereafter given, and much argument made to the effect that a complete and satisfactory solution of the grade crossing situation was dependent upon a union depot at the Plaza, and the Commission finds this to be the fact. That such a finding is amply supported by the evidence we entertain no doubt.

The evidence was equally clear as to the inadequacy of the present passenger depots of the carriers. The Los Angeles and Salt Lake Railroad Company's depot is admittedly inadequate. Built in 1891, at an estimated cost of $10,000, it is shamefully lacking in every particular necessary to satisfy the requirements of public convenience and necessity of a city of six hundred thousand people. The Santa Fe depot, built in 1893, at an estimated cost of $50,000, now "provides scant facilities for the use of passengers," and is also wholly inadequate for present and future needs. As to the Southern Pacific depot, its continued use does not conform to any satisfactory plan for the elimination of the grade crossings on Alameda street. The imperative public necessity for the elimination of these grade crossings is a complete answer to the claim that the order requiring the abandonment of this depot amounts to a taking of property without compensation.

In arguments on rehearing, considerable stress was laid upon the alleged cost of a union passenger station at the Plaza. The matter of cost was thoroughly discussed in [fol. 117] the former opinion; it only remains to add that a very large expenditure on the part of all carriers will be immediately necessary, irrespective of what plan the Commission might adopt. Under the Southern Pacific and Salt Lake's own plan, approximately $17,000,000 would have to be expended. The Commission is convinced that the needs of the public will not be met by this plan, but believes, on the contrary, that public convenience and necessity require a complete and satisfactory solution of the grade crossing and terminal questions, and that, therefore, public convenience and necessity not only justify, but require the added expense necessary to such a solution.

Objection was made by the carriers to that portion of the order which requires the appointment of a representative committee, to which is to be delegated authority to prepare plans. On further consideration, the Commission has determined to modify the order in this regard and the order will be made, directing carriers themselves to prepare and submit plans and estimates of cost without the interposition of a representative committee.

No special reference was made in the former order to the part the City of Los Angeles should bear in the expense of eliminating the grade crossings along the Los Angeles River. It was, of course, understood by all parties that the city would pay a proportionate share of this expense. On further consideration the Commission has determined that the city should be specifically included in the order, and required to participate in the filing of the statement showing proportionate cost which each of the defendants and the city is to pay.

Considerable evidence was introduced by various parties concerning architectural beauty, improvement of real estate values, civic pride, and similar matters in connection with a union passenger station at the Plaza. The Commission desires to make it plain that no evidence of this character was considered of any importance in determining what the order should be, nor are any of these [fol. 118] matters made the basis of the decision in this case. The decision and order herein are based upon the

facts that the safety, comfort, convenience and necessity of the general public traveling across the grade crossings of the defendant carriers, also of the passengers and employees on the trains of said carriers, and also of the public utilizing passenger facilities in the city of Los Angeles, requires the elimination of grade crossings and the construction of a union passenger depot, as directed in the following order.

Findings and Orders

Complaints having been filed by the Municipal League, Central Development Association, Civic Center Association, and the cities of Pasadena, Alhambra, San Gabriel and South Pasadena, and an application filed by the Southern Pacific Company and the Los Angeles & Salt Lake Railroad Company, and all of these complaints and said application having been consolidated in this proceeding, and an exhaustive investigation into all of the matters connected therewith having been made by the Commission, public hearings having been held and the matters submitted for decision, the Commission now makes its findings of fact as follows:

1. That the existing grade crossings of the Southern Pacific Company's tracks on Alameda Street, at College Street, North Main Street, Macy Street, Aliso Street, Commercial Street, Jackson Street, East First Street, East Second Street, East Third Street, East Fourth Street, East Sixth Street, Industrial Street, East Seventh Street, East Eighth Street, East Ninth Street, East Fourteenth Street and East Fifteenth Street, in the City of Los Angeles, and certain existing grade crossings adjacent to the Los Angeles River in the City of Los Angeles, to-wit, the crossing of Macy Street by the tracks of The Atchison, Topeka and Santa Fe Railway Company, the crossing of Aliso Street and of the [fol. 119] tracks of the Pacific Electric Railway Company thereon by the tracks of The Atchison, Topeka and Santa Fe Railway Company and by the tracks of the Los Angeles and Salt Lake Railroad Company and the crossing of Seventh Street by the tracks of The Atchison, Topeka and Santa Fe Railway Company and by the tracks of the Los Angeles and Salt Lake Railroad Company are unsafe, and the continued use thereof for the movement of trains by the said respective

carriers using such crossings endanger the employees of said carriers and the public generally; and that public interest, safety, convenience and necessity require that all such dangerous conditions at said crossings be eliminated.

2. That the existing passenger stations of The Atchison, Topeka and Santa Fe Railway Company at East Second Street and Santa Fe avenue in the City of Los Angeles, and of the Los Angeles and Salt Lake Railroad Company at East First Street near the east bank of the Los Angeles River in the City of Los Angeles, are improper, inadequate and insufficient to promote the security, convenience and necessity of the public. That the existing depot of the Southern Pacific Company at Fifth and Alameda Streets in the City of Los Angeles does not conform to the plan for the elimination of said dangerous railroad grade crossings in the City of Los Angeles herein found to be required by public safety, convenience and necessity.

3. That in order to eliminate the dangerous grade crossings hereinabove enumerated and to provide adequate and sufficient passenger stations for the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and Los Angeles and Salt Lake Railroad Company, in the City of Los Angeles, for the promotion of the security, convenience and necessity of their employees and that of the public generally, and to secure adequate service and facilities for the performance by the said defendants, and each of them, of their public utility functions in the state of Cali- [fol. 120] fornia, it is necessary, and the public safety, convenience and necessity require that a new structure or structures, to-wit, a union passenger station and buildings incidental thereto, be erected by the defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and in connection therewith such improvements and changes in existing facilities of said defendants be made by said defendants as may be reasonably necessary and incidental to the use of said union passenger station, and that all railroad traffic be eliminated from Alameda Street, between College Street and Fifteenth Street, inclusive, in the City of Los Angeles, except local freight switching. That public safety, convenience and necessity require that a separation of grade be made by the defendants speci-

fied in the order herein at the said crossings adjacent to the Los Angeles River in the City of Los Angeles, to-wit, the crossing of Aliso Street and the tracks of the Pacific Electric Railway Company thereon by the tracks of The Atchison, Topeka and Santa Fe Railway Company and by the tracks of the Los Angeles and Salt Lake Railroad Company, the crossing of Macy Street by the tracks of The Atchison, Topeka and Santa Fe Railway Company and by the tracks of the Los Angeles and Salt Lake Railroad Company and the crossing of East Seventh Street by the tracks of The Atchison, Topeka and Santa Fe Railway Company and by the tracks of the Los Angeles and Salt Lake Railroad Company.

4. That public safety, convenience and necessity require the location and the site of the Union passenger station referred to in paragraph three of these findings be within the portion of the City of Los Angeles bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue and the Los Angeles River.

Basing its order upon said findings of fact and the further findings and statements of fact contained in the original opinion in this case and the opinion preceding this order:

[fol. 121] It is hereby ordered:

1. That the defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, proceed to the procurement of sufficient grounds within the boundaries hereinafter set out, and proceed with the construction of an adequate union passenger station thereon and buildings incidental thereto in the City of Los Angeles, and to make such additions to, extensions of, improvements and changes in the existing railroad facilities of said companies as may be reasonably necessary and incidental to the use of said union passenger station.

2. That the site of the union passenger station referred to in paragraph one of this order shall be within that portion of the City of Los Angeles bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue and the Los Angeles River.

3. That said Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los An-

geles and Salt Lake Railroad Company, and each of them, within six (6) months from the effective date hereof, file with this Commission, for its approval, a general plan or plans, with the necessary profile or profiles, and general and detailed drawings, of a union passenger station located on said site, together with all additions to, extensions of, improvements and changes in existing railroad facilities as are reasonably necessary and incidental to the use of said union passenger station; also estimates of cost of construction of said union passenger station, together with said necessary facilities and additions to, extensions of, improvements and changes in existing railroad facilities; also estimates of damages and of salvage; also description and plans of the necessary temporary operating arrangements during the period of the transition pending the completion of said new union passenger station.

4. That at the time of the filing of the plans referred to [fol. 122] in paragraph three of this order, the said Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, shall file with this Commission a statement of the proportionate expense which each of said defendants is to bear for the procurement of said site and the construction of said union passenger station and said necessary facilities and changes, additions, extensions and improvements to existing facilities; and in the event said defendants shall fail to file said statement, showing the proportion of the expense which each of them is to bear, as herein required, this Commission will proceed to fix and apportion said expense to each of said defendants.

5. That upon the filing of the plans referred to in paragraph three of this order, this Commission will either approve said plans or require the same to be modified until they meet with its approval. Work upon the construction of said union passenger station shall commence within ninety (90) days after the approval by the Commission of said plans and shall be completed within three (3) years from that date, unless for good cause an extension of time is granted.

6. That defendant, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Rail-

road Company, and each of them, shall proceed to the construction of such viaducts, works and structures as may be necessary to provide for a separation of the grades of the railway tracks of said defendants from the public streets at Macy and East Seventh Streets in the City of Los Angeles.

7. That said The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, shall, within sixty (60) days from the effective date of this order, file with this Commission a general plan or plans providing for grade separations at said Macy and Seventh streets; also, profile [fol. 123] or profiles and detailed drawings of viaducts necessary for such grade separations, together with estimates of the cost of construction for each viaduct and for incidental expenditures and for damages.

8. That at the time of filing the plans referred to in paragraph seven of this order, the said The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, and the City of Los Angeles shall file with this Commission a statement showing the proportionate expense which each of said defendants and said city is to bear for the construction of said viaducts and other necessary works for the separation of grade crossings. In the event said defendants and said city shall be unable to agree as to the proportionate expense to be borne by each for the viaducts and works necessary to the separation of said grades, the expense of such structures and works shall be apportioned to each of said defendants and said city by this Commission.

9. That upon the filing of the plans referred to in paragraph seven of this order, this Commission will either approve said plans or require the same to be modified until they meet with its approval. Work upon said viaducts, structures and works for the separation of grades at said Macy Street and Seventh Street shall commence within thirty (30) days after the approval by the Commission of said plans, and shall be completed within two (2) years from that date, unless for good cause an extension of time is granted.

10. That defendants, The Atchison, Topeka and Santa Fe Railway Company, the Los Angeles and Salt Lake Railroad Company and the Pacific Electric Railway Company, and each of them, shall proceed to the construction of such viaducts, works and structures as may be necessary to provide for a separation of the grades of the railway tracks of said defendants from the public street at Aliso Street in the City of Los Angeles, and of the tracks of the Pacific [fol. 124] Electric Railway Company from the tracks of said other defendants.

11. That said The Atchison, Topeka and Santa Fe Railway Company, the Los Angeles and Salt Lake Railroad Company and the Pacific Electric Railway Company, and each of them, shall, within sixty (60) days from the effective date of this order, file with this Commission a general plan or plans, providing for said grade separations at Aliso Street; also profile or profiles and detailed drawings of viaducts necessary for such grade separations, together with estimates of cost of construction for each viaduct and for incidental expenditures and for damages.

12. That at the time of filing the plans referred to in paragraph eleven of this order, the said The Atchison, Topeka and Santa Fe Railway Company, the Los Angeles and Salt Lake Railroad Company and the Pacific Electric Railway Company, and each of them, and the City of Los Angeles, shall file with this Commission a statement showing the proportionate expense which each of said defendants and said city is to bear for the construction of said viaducts and other necessary works for the separation of said grade crossings. In the event said defendants and said city shall be unable to agree as to the proportionate expense to be borne by each for the viaducts and works necessary to the separation of said grades, the expense of such structures and work shall be apportioned to each of said defendants and said city by this Commission.

13. That upon the filing of the plans referred to in paragraph eleven of this order, this Commission will either approve said plans or require the same to be modified until they meet with its approval. Work upon said necessary viaducts, structures and works for the separation of grades at said Aliso Street shall commence within thirty (30) days

after the approval by the Commission of said plans and shall be completed within two (2) years from said date, unless for good cause an extension of time is granted.

[fol. 125] 14. That upon the completion of the union passenger terminal as required by this order, the defendant, Southern Pacific Company, shall discontinue the operation of trains on Alameda Street, between College Street and Fifteenth Street, inclusive, in the City of Los Angeles, except for the purpose of local freight switching, which may be carried on during limited hours to be hereafter fixed by supplemental order.

It is hereby further ordered, that Application No. 3346 of the above entitled proceedings be, and the same is, hereby dismissed.

The effective date of this order is hereby fixed and designated as the third day of January, 1922.

Wherever in this order a time is fixed for the doing of any act or the compliance with any term or condition of the order, such time shall be computed from said date.

The Railroad Commission reserves the right to make such further order or orders in these proceedings relating to the construction, operation, modification and abandonment of facilities, to costs and division of costs, and to all other matters relating thereto, as may be determined by the Commission to be just and reasonable and as public safety, convenience and necessity may require.

Dated at San Francisco, California, this 6th day of December, 1921.

H. W. Brundige, H. D. Loveland, Irving Martin, Chester H. Rowell, H. S. Benedict, Commissioners.

Certified as a true copy.

H. G. Mathewson, Secretary Railroad Commission, State of California.

[fol. 126] IN SUPREME COURT OF CALIFORNIA

(L. A. No. 7166. In Bank. December 19, 1922)

THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY (a Corporation), Petitioner,

v.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, Respondent

(L. A. No. 7165. In Bank. December 19, 1922)

LOS ANGELES & SALT LAKE RAILROAD COMPANY (a Corporation), Petitioner,

v.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, Respondent

SOUTHERN PACIFIC COMPANY (a Corporation) et al., Petitioners,

v.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, Respondent

Proceedings in certiorari to review an order of the Railroad Commission providing for the elimination of grade crossings and the establishment of a union terminal depot. Order annulled.

The facts are stated in the opinion of the court.

E. W. Camp, Paul Burks, M. W. Reed, C. W. Durbrow, A. S. Halsted, Fred E. Pettit, Jr., and Wm. F. Herrin for Petitioners.

Hugh Gordon and William W. Clary for Respondent.

Jess E. Stephens, Milton Bryan and Max Thelen for City of Los Angeles.

Seward A. Simons for Central Development Association of Los Angeles.

Marshall Stimson for Civil Center Association of Los Angeles.

James H. Howard for City of Pasadena.
William Hazlett for City of South Pasadena.
F. W. Henshaw and Corbet & Selby, of Counsel.

DECISION

THE COURTS These three proceedings were instituted before this court for the purpose of having reviewed and annulled an order of the Railroad Commission, made in certain proceedings before that body of the following nature: In 1916 the Civic Center Association of the City of Los Angeles filed a complaint before the commission [fol. 127] against the Southern Pacific Company, the Atchison, Topeka & Santa Fe Company and the Los Angeles and Salt Lake Company, praying for an order providing for the elimination of certain grade crossings in said city and for the establishment of a union depot therein. Two other civic organizations of said city presently filed similar petitions asking for like orders. Four petitions were also filed from adjacent municipalities asking for the elimination of grade crossings and a reorganization of the track systems of these several railroad corporations. In addition to these the Southern Pacific Company and the Los Angeles & Salt Lake Railroad Company united in an application to the commission for the establishment of a union terminal depot as to themselves upon a certain site and also for the elimination of certain grade crossings as an incident to the location of said terminal. These eight proceedings were consolidated by the stipulation of all of the parties and heard as one proceeding before the Commission, which, after a prolonged and exhaustive consideration of the issues involved, made its order for the elimination of certain grade crossings and for the establishment of a union terminal depot for all of said railroads, to be located within a certain defined area. The present proceedings were instituted to review this order. Upon the filing of the return to the writ this court made an order consolidating these three proceedings for the purpose of hearing and decision.

This court has already had before it the question as to the power of the Railroad Commission to provide for the elimination of grade crossings as to all of the present petitioners, in the case of Civic Center Assn., etc., v. Railroad

Commission, 175 Cal. 441, in which case it was held as between itself and the city of Los Angeles the Railroad Commission possessed this power and was directed to exercise it. In proceeding to exercise said power pursuant to such direction the Railroad Commission, in the course of hearings upon the consolidated proceedings before it, concluded [fol. 128] that as an indispensable element in the elimination of the proposed grade crossings it was necessary to provide for a union terminal depot for all three railroads, with such changes and extensions of the railroad lines of each as would be necessary for the utilization of said depot by each and all of these railroads; and it therefore assumed and exercised the power so to do, whereupon the present proceedings were instituted by the petitioners herein.

The main contention of the petitioners is that the Railroad Commission has no jurisdiction to make any order or orders relative to the establishment and construction of a union depot for part or all of the petitioners herein, for the reason that such power has been taken from the state and its agency and has been vested in the Interstate Commerce Commission by virtue of the amendment to the Interstate Commerce Commission Act made by Congress on February 28, 1920. This contention, standing as it does upon the threshold of the subject under review will be first considered.

The act of Congress above referred to, and commonly known as the Esch-Cummings Act, is twofold in its purposes and effects. Its first objecte was to accomplish the termination of the control of the railroads taken over by the federal government during the progress of the war by virtue of the "Federal Control Act," approved March 21, 1918, and by the later amendments to said Act. The second of its main objects was to amend the act of Congress commonly known as the "Interstate Commerce Act," originally approved February 24, 1887, with its later amendments. It is with this latter purpose that we are concerned in this proceeding. An inspection of this portion of the said amendatory act discloses that it embodies a large number of amendments to the Interstate Commerce Act as it existed at the date of said amendment, and that many of these are of the most important and far-reaching character. The supreme court of the United States in the recent case of Railroad Commission of Wis-

consin v. Chicago, B. & Q. R. R. Co., 257 U. S. 563, 42 Sup. [fol. 129] Ct. Rep. 232, in reciting the provisions and commenting upon the scope of said amendatory act, says:

"It is manifest from this very condensed recital that the act made a new departure. Theretofore the control which Congress through the Interstate Commerce Commission exercised was primarily for the purpose of preventing injustice by unreasonable or discriminatory rates against persons and localities, and the only provisions of the law that inured to the benefit of the carriers were the requirement that the rates should be reasonable in the sense of furnishing an adequate compensation for the particular service rendered and the abolition of rebates. The new measure imposed an affirmative duty on the Interstate Commerce Commission to fix rates and to take other important steps to maintain an adequate railway service for the people of the United States. This is expressly declared in section 15a to be one of the purposes of the bill."

Turning to the provisions of said amendatory act which embody these radical extensions of the powers and duties of the Interstate Commerce Commission, we find that section 15a thereof to which the foregoing decision expressly refers, greatly enlarges the powers of the commission with regard to the regualtion of not only interstate but also of intrastate rates, whenever the control and regulation of the latter are necessary to the exercise of the affirmative powers of Congress in developing interstate commerce. The decision above referred to expressly deals with that phase of the question and upholds the powers with which the Interstate Commerce Commission is invested under said section of the amendatory act. Turning to the provision of said act amending the first paragraph of section 5 of the Interstate Commerce Act we find in subdivisions 4 and 5 thereof the following express statement of the scope and purposes of [fol. 130] said act:

"(4) The Commission shall as soon as practicable prepare and adopt a plan for the consolidation of the railway properties of the continental United States into a limited number of systems. In the division of such railways into such systems under such plan, competition shall be preserved as fully as possible and wherever practicable, the

existing routes and channels of trade and commerce shall be maintained. Subject to the foregoing requirements, the several systems shall be so arranged that the cost of transportation as between competitive systems and as related to the values of the properties through which the service is rendered shall be the same, so far as practicable, so that these systems can employ uniform rates in the movement of competitive traffic and under efficient management earn substantially the same rate of return upon the value of their respective railway properties."

"(5) When the Commission has agreed upon a tentative plan, it shall give the same due publicity and upon reasonable notice, including notice to the Governor of each State, shall hear all persons who may file or present objections thereto. The Commission is authorized to prescribe a procedure for such hearings and to fix a time for bringing them to a close. After the hearings are at an end, the Commission shall adopt a plan for such consolidation and publish the same; but it may at any time thereafter, upon its own motion or upon application, reopen the subject for such changes or modifications as in its judgment will promote the public interest. The consolidations herein provided for shall be in harmony with such plan."

In the interpretation to be given to the further provisions of said act, having more particular reference to the immediate question before us, the foregoing provisions of said act expressive of its enlarged scope and purposes are to be [fol. 131] borne in mind. Having these in view, the following provisions of the act are found to bear directly upon the powers and functions with which the Interstate Commerce Commission have been invested, with relation to any and all extensions and changes in the lines, tracks and facilities of railroads engaged wholly or largely in interstate commerce. The term "railroad" as used in said act is defined by subdivision 3 of section 1 of the Interstate Commerce Act as thus amended as including "all the road in use by any common carrier operating a railroad, whether owned or operated under a contract, agreement or lease, and also all switches, spurs, tracks, terminals, and terminal facilities of every kind used or necessary in the transportation of the persons or property designated herein, including all freight

depots, yards and grounds, used or necessary in the transportation or delivery of any such property." The term 'car service' as employed in said amendatory act is defined in subdivision 10 of section 1 of the Interstate Commerce Act, as thus amended, to include the use, control, supply, movement, distribution, exchange, interchange and return of locomotives, cars and other vehicles used in the transportation of property, including special types of equipment and the supply of trains by any carrier by railroad, subject to this act. Subdivision 15 of said section 1 of the said original act as thus amended provides:

"Whenever the Commission is of opinion that shortage of equipment, congestion of traffic, or other emergency requiring immediate action exists in any section of the country, the Commission shall have, and it is hereby given, authority, either upon complaint or upon its own initiative without complaint, at once, if it so orders, without answer or other formal pleading by the interested carrier or carriers, and with or without notice, hearing, or the making or filing of a report, according as the Commission may determine: * * * (c) to require such joint or common use [fol. 132] of terminals, including main-line tracks or tracks for a reasonable distance outside of such terminals, as in its opinion will best meet the emergency and serve the public interest, and upon such terms as between the carriers as they may agree upon, or, in the event of their disagreement, as the Commission may after subsequent hearing find to be just and reasonable."

Subdivision 18 of said section 1 of said original act as thus amended further provides:

"(18) After ninety days after this paragraph takes effect no carrier by railroad subject to this Act shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this Act over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line

of railroad, and no carrier by railroad subject to this Act shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first shall have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment" (U. S. Stats. at Large, Vol. 41, p. 477).

Subdivision 21 of said section 1 of said original act as thus amended in part provides:

"(21) The Commission may, after hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier by railroad subject to this Act, party to such proceeding, to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this Act, and to extend its line or lines: Provided, That no such authorization or order shall be made unless the Commission finds, as to such extension, that is is reasonably required in [fol. 133] the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public."

Subdivision 22 of said section 1 of said original act as thus amended provides:

"(22) The authority of the Commission conferred by paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation."

Subdivisions 3 and 4 of section 3 of the original act as thus amended provides:

"(3) All carriers, engaged in the transportation of passengers or property, subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to

and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares, and charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper."

"(4) If the Commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including main line track or tracks for a reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required, to be ascertained on the principle control-line compensation in con- [fol. 134] demnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries su-tained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the case may be."

The foregoing excerpts from among the many provisions of said amendatory act would seem to fully justify the statement of Chief Justice Taft, above quoted from the decision of the supreme court of the United States, as to the radical departure effected by the said amendment to the Interstate Commerce Act in the direction of placing the entire control over the rates, properties, tracks, terminals and facilities of the railroads engaged in interstate commerce in and under the jurisdiction of the Interstate Commerce Commission. That Congress had the full power so to do, is

established by a long line of judicial decisions reaching back to the leading case of Gibbons v. Ogden, 9 Wheat. 1, wherein Chief Justice Marshall carved out the pathway for all later decisions by the declaration that the power of Congress to regulate commerce among the several states is supreme and plenary; "is complete in itself, may be exercised to its utmost extent and acknowledges no limitations other than are prescribed in the Constitution." It is needless to cite in detail the almost numberless cases in which the doctrine enunciated in that early decision has been reiterated and applied, but among the more recent cases [fol. 135] involving its application are the Minnesota Rate Cases, 230 U. S. 352, wherein the supreme court of the United States, Mr. Justice Hughes delivering the opinion (p. 432), gives very full and exhaustive consideration to the question as to the scope and effect of the federal legislation upon the subject of interstate commerce, with special reference to its limitations upon the legislative or administrative power of the states to deal with any matters relating to interstate commerce coming within the terms and scope of such federal legislation. In the course of that decision Mr. Justice Hughes makes use of the following significant language in considering certain phases of those cases analogous to those presented in the case at bar:

"The interblending of operations in the conduct of interstate and local business by interstate carriers is strongly pressed upon our attention. It is urged that the same right-of-way, terminals, rails, bridges, and stations are provided for both classes of traffic; that the proportion of each sort of business varies from year to year and, indeed, from day to day; that no division of the plant, no apportionment of it between interstate and local traffic, can be made to-day, which will hold to-morrow; that terminals, facilities and connections in one State aid the carrier's entire business and are an element of value with respect to the whole property and the business in other States; that securities are issued against the entire line of the carrier and cannot be divided by States; that tariffs should be made with a view to all the traffic of the road and should be fair as between through and short-haul business; and that, in substance, no regulation of rates can be just, which does not take into consideration the whole field of the carrier's operations, ir-

respective of state lines. The force of these contentions is emphasized in these cases, and in others of like nature, [fol. 136] by the extreme difficulty and intricacy of the calculations which must be made in the effort to establish a segregation of intrastate business for the purpose of determining the return to which the carrier is properly entitled therefrom.

"But these considerations are for the practical judgment of Congress in determining the extent of the regulation necessary under existing conditions of transportation to conserve and promote the interests of interstate commerce."

(1) Numerous other cases may be cited from both federal and state courts sustaining the rule that wherever the interstate and intrastate transactions of carriers are so related that the government of the one involves the control of the other, it is Congress, and not the state, that is entitled to prescribe the final and dominant rule, for otherwise Congress would be denied the exercise of its constitutional authority and the state, and not the nation, would be supreme within the national field. (Houston & Texas Ry. v. United States, 234 U. S. 342, 351, and cases cited. The case of People ex rel. New York Central R. R. Co. v. Public Service Commission, 233 N. Y. 113, is a case which nearly approaches identity with the case at bar. It involves the question as to whether under the public service commission law of the state of New York the public service commission of that state had power to make an order directing two railroad companies, engaged in interstate and intrastate commerce within that state, to reconstruct a switch or track connecting their lines and install other tracks and facilities so as to furnish adequate and convenient interchange of freight between said railroads. Upon appeal from an order dismissing a writ of review instituted by the relator for the purpose of testing the power of the public service commission to make said order, it was held by said court that the state commission had no jurisdiction to make such order in view of the provisions [fol. 137] of the act of Congress of 1920 amending the interstate commerce law. The court said:

"The Transportation Act of 1920, section 402, amended the second paragraph of section 3 of the Interstate Com-

merce Act to provide: 'All carriers, engaged in the transportation of passengers or property, subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares and charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper.'

"A violation of that provision of the act of Congress authorizes a complaint by any interested party to the interstate commerce commission, and after a hearing before that commission to such relief as the facts warrant. The interstate commerce commission is clothed with authority by the section quoted to compel carriers to afford reasonable and proper facilities for the interchange of traffic between their respective lines. The order made by the public service commission commands relator and the Lehigh Valley to make such track connections between their roads as shall be necessary or proper to establish and furnish adequate and convenient interchange of freight between said roads. To sustain the order of the public service commission in the instant case would necessarily establish that the two several commissions mentioned were clothed with jurisdiction to grant the relief sought and require us to ignore the well-established principle of law that the Congress having delegated to the interstate commerce commission power to deal with the subject-matter of this proceeding, an exercise of like power by the state is thereby [fol. 138] superseded." Citing Erie R. R. Co. v. People of the State of New York, 233 U. S. 671; Chicago, R. I. & P. Ry. Co. v. Hardwick Elevator Co., 226 U. S. 426.

The respondents herein, however, contend that the Railroad Commission was empowered to make and enforce the order sought to be annulled in this proceeding under the authority of the case of Missouri, etc. v. Larrabee, 211 U. S. 612. That case held that the mere delegation by Congress to the Interstate Commerce Commission of power to act in a given matter did not prevent such action by the state

authorities unless the commission had taken action in the particular matter involved, quoting therefrom the following:

"Until then the authority of the state in merely incidental matters remains undisturbed. In other words, the mere grant by Congress to the Commission of certain national powers in respect to interstate commerce does not of itself, and in the absence of action by the Commission, interfere with the authority of the state to make those regulations conducive to the welfare and convenience of its citizens."

In the matter of the extension of railroad facilities and in the abandonment of other railroad facilities, including terminals, not only is the commission empowered to act upon the subject, but Congress has expressly prohibited the railroad companies from acting without the consent of the Interstate Commerce Commission (see sec. 1, subd. 18, supra). Subdivision 20 of that section (41 U. S. Stats., at Large, p. 478), construed in connection with subdivisions 19 and 21, authorizes the commission to issue a certificate for the extension or abandonment of portions of railway lines and for the issuance of a certificate authorizing such work to be done or a line to be abandoned (subd. 18, 19, 20, [fol. 139] 21), and with reference to such certificate provides as follows:

"From and after issuance of such certificate, and not before, the carrier by railroad may, *without securing approval other than such certificate*, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulating body of the State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this sec-

tion, shall upon conviction thereof be punished by a fine of not more than $5,000 or by imprisonment for not more than three years, or both." (Italics ours.)

(2) It is clear from the foregoing that Congress has not only vested jurisdiction in the Interstate Commerce Commission over the question of the extension of terminal facilities, such as contemplated by the order of the Railroad Commission in the case at bar, but has also prohibited the railroads from making such improvements without the consent of the Interstate Commerce Commission. This being true, Congress has fully occupied the field of regulation of such matters and the power of the state commission has thereby been terminated.

An examination of the case of Missouri etc. v. Larrabee, supra, further shows that it was decided in 1909, several years prior to the passage of the Amendatory Act of 1920, and at a time prior to any attempt on the part of Congress to invest the Interstate Commerce Commission with jurisdiction over the matter of changes or extensions in inter-[fol. 140] state railroad lines.

The respondents also urge the contention that since this court has decided in the case of Civic Center Association v. Railroad Commission, supra, that the Railroad Commission of California had jurisdiction to make and enforce orders providing for the elimination of those certain grade crossings involved, in part, in the proceedings before the Railroad Commission, and since the said commission had found and held in said proceedings that the establishment of a union terminal depot was an indispensable element in accomplishing the elimination of said grade crossings, the commission had the power to include in its order for the elimination of such grade crossings the creation of such union terminal depot. There is no merit in this contention, for the reason, very aptly set forth in the extract above quoted from the decision of the New York court of appeals in the case of People etc. v. Public Service Commission, supra. It is also without merit for the further reason that, notwithstanding the views expressed by the Railroad Commission in its findings and conclusions in the proceeding herein presented for review, we can perceive no indispensable relation between the elimination of grade cross-

ings and the establishment of union depot facilities, nor can we see any insurmountable difficulty why jurisdiction over the matter of eliminating grade crossings may not be exercised in a proper case consistently, and it may be concurrently, with the exercise of the authority which is vested by the act of Congress of 1920 in the Interstate Commerce Commission over the subject of union terminal depot facilities.

From the foregoing excerpts from the act of Congress of 1920, amendatory of the interstate commerce law, and from the authorities above cited, we arrive at the conclusion that full power and authority over the matter of union terminal depot facilities of the railroads which are largely engaged in interstate commerce, and who are the petitioners, herein, has been vested in the Interstate Commerce Commission [fol. 141] under the terms of said Amendatory Act of 1920, and that by virtue thereof the Railroad Commission of California, one of the respondents herein, has been divested of the power, authority and jurisdiction over that subject, sought by it to be exercised in the several proceedings before it and by the order presented for review herein. This disposition of the primary inquiry involved in these proceedings renders unnecessary a discussion of the several subsidiary questions presented for our consideration by the briefs of counsel herein.

The application is granted and the order of the Railroad Commission annulled.

Lennon, J., Waste, J., Wilbur, J., Shurtleff, J., Sloane, J., and Lawlor, J., concurred.

SHAW, C. J., concurring:

I concur in the foregoing opinion on the grounds therein stated.

I wish to say, however, in addition, that the conclusion that the Railroad Commission has no power to order the terminal depot in question constructed can also be reached by resort to the principle laid down in Atchison, T. & S. F. Ry. Co. v. Railroad Com., 173 Cal. 577. That decision establishes the principle that railroads are private property which are devoted to public use, and that the state has no power to order the railroad company, without its consent,

to establish a new line of railroad for the benefit of the public. The scheme here embraced in the order of the Railroad Commission contemplates the expenditure of a very large sum of money by the railroad companies in the construction of a new terminal depot for their joint use in a place where there is no existing depot and no track leading thereto. Entirely new tracks will have to be built to reach the new depot, and the land on which it is to be erected and on which the track is to be built will have to be acquired by [fol. 142] the said companies, or by some subsidiary company in which they are all interested, and vast sums of money must be used in constructing the buildings and tracks required for the union depot.

If this be true it is equally beyond the power of the Interstate Commerce Commission to make the order. To require the railroad companies to construct this depot and the tracks necessary therefor is equivalent to ordering them to dedicate new property to a public use. I know of no power which will justify the state in commanding a railroad company to thus acquire and dedicate property to a public use.

[fol. 143] BEFORE RAILROAD COMMISSION OF CALIFORNIA

Cases No. 970, etc.

[Titles omitted]

[fol. 144] ORDER REOPENING MATTERS FOR FURTHER PROCEEDINGS

By the COMMISSION:

The Interstate Commerce Commission having, on July 6, 1925, rendered its decision in its Docket No. 14778 and Finance Docket Nos. 3556 and 3569, entitled respectively:

"City of Los Angeles, Complainant, vs. Los Angeles & Salt Lake Railroad Company, Pacific Electric Railway Company, Southern Pacific Company, Southern Pacific Railroad Company, The Atchison, Topeka and Santa Fe Railway Company and Union Pacific Railroad Company, Defendants," No. 14778.

[fol. 145] "In the Matter of the Application of Southern Pacific Company and Southern Pacific Railroad Company, for a certificate of public convenience and necessity, authorizing the abandonment of lines and the abandonment of certain main line freight and passenger service in Los Angeles, California, Finance Docket No. 3556.

"In the Matter of the Application of Southern Pacific Company, Southern Pacific Railroad Company, and Los Angeles & Salt Lake Railroad Company, for a certificate of public convenience and necessity for the construction of new lines and extension of lines of railroad in Los Angeles, California," Finance Docket No. 3569.

And said Interstate Commerce Commission having, among other things, found and declared as follows:

"That the present and future public convenience and necessity require and will require (a) the extension by defendants of their respective main lines of steam railroad in the city of Los Angeles, Calif., so as to reach and properly serve any union passenger station and terminal within that portion of said city bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue and the Los Angeles River, which they or any of them may construct and establish in accordance with a lawful order of the Railroad Commission of California, and (b) the extension of their respective main lines so as to properly provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal."

And said Interstate Commerce Commission having further stated:

"An order will be entered denying the application in Finance Docket No. 3569. We are not advised what action, if any, the Railroad Commission of California will take in connection with these matters, and under the existing circumstances we will issue no certificates or further orders at this time. We will retain jurisdiction of No. 14778 and Finance Docket No. 3556 for the purpose of making such further findings and orders and issuing such certificates as the record warrants. The findings and order now made are based upon the present record and upon the plans pre-

sented to us. If, in the development of a union passenger terminal plan, the carriers or the Railroad Commission of California evolve a plan considerably more extensive than, or materially different from, a plan for a station within the Plaza area as here considered to be in the public interest, [fol. 146] our ultimate findings as to the public convenience and necessity, and as to the impairment of the carrier's ability to handle their own traffic and to perform their duties to the public, will of course be based upon a consideration of those facts rather than upon the present record."

And it further appearing that this Commission, in response to the petition of the Central Development Association of Los Angeles the complainant in Case No. 971 entitled as follows:

"Central Development Association of Los Angeles, Complainant, vs. Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company, Los Angeles & Salt Lake Railroad Company, Defendants,"

has this day made its order re-opening said Case No. 971 for further consideration; and

Good cause appearing that all of the proceedings heretofore considered by this Commission in connection with said Case No. 971 be re-opened for further consideration,

Now, therefore, it is hereby ordered that the above entitled matters be, and the same are hereby re-opened, and that a hearing upon said matters be had before this Commission en banc on Monday, the 30th day of November, 1925, at 10:00 a. m., in the Court Room of the Commission, 810 Pacific Finance Building, Los Angeles, California.

Dated at San Francisco, California, this 3rd day of October, 1925.

H. W. Brundige, C. L. Seavey, George D. Squires, Ezra W. Decoto, Leon O. Whitsell, Commissioners. (Seal.)

[fol. 147] Endorsements appearing on first page of document: Filed Sep. 16, 1025, Los Angeles Office, Railroad Commission. Filed Railroad Commission, State of California, Sep. 18, 1925. H. G. Mathewson, Secretary.

[fol. 148] BEFORE RAILROAD COMMISSION OF CALIFORNIA

No. 971

[Title omitted]

PETITION FOR REOPENING CASE

Central Development Association of Los Angeles, complainant herein, respectfully petitions that the Railroad Commission of the State of California make its order reopening the above entitled proceeding and setting the same for further hearing and for consideration of the issues presented therein, and as grounds for said petition respectfully shows:

I

By its previous decision rendered herein on the 6th day of December, 1921, this Honorable Commission found and declared that public convenience and necessity required the erection by the defendant railroads of a union passenger station within a certain described area adjacent to the Plaza in the City of Los Angeles, for the purpose of eliminating certain existing dangerous grade crossings and of providing adequate transportation facilities for the people of Los Angeles and surrounding communities; and basing its order upon said findings, ordered the defendant railroads to proceed with the erection of such union passenger depot. Thereafter, upon review by the Supreme Court of the State of California, said order was annulled upon the ground that the Interstate Commerce Commis-
[fol. 149] sion, under the provisions of the Transportation Act of 1920, had been given jurisdiction over the things required to be done by said carriers under the terms of said order of this Honorable Commission.

Upon certiorari to the United States Supreme Court, said decision of the Supreme Court of the State of California was affirmed in a decision rendered April 7, 1924, in which the Supreme Court of the United States said:

"We were advised by statements at the bar that, after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with the Interstate Commerce Commission asking for an order to

provide, maintain and use a union station; that a hearing followed and that, pending the decision in this Court, the matter is held under consideration.

"For the reasons given, we think the course taken by the City of Los Angeles was the correct one. Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of Section 402 of the Transportation Act, the respondent railways can not be required to provide a new interstate union station and to extend their main tracks thereto as ordered by the State Railroad Commission."

II

At the time of the rendition of said decision by the United States Supreme Court, there was pending before the Interstate Commerce Commission a proceeding instituted by the City of Los Angeles against the railroads above named as defendants (Docket #14778) wherein the City of Los Angeles asked the said Interstate Commerce Commission, in the exercise of such power and jurisdiction as it had under the Transportation Act of 1920 and the Interstate Commerce Act, to find and declare that public necessity and convenience require the erection by the said defendant railroads of a union passenger station within the same area adjacent to the Plaza in the City of Los Angeles as the Railroad Commission of the State of California had previously fixed as the site for such union station, and to order said defendant carriers to proceed with the erection of such [fol. 150] union passenger station. At the same time there were also pending before said Interstate Commerce Commission certain proceedings instituted by the applications of the Southern Pacific and the Los Angeles & Salt Lake Railroad Company for authorization to establish a union passenger station for said two railroads at the site of the present Southern Pacific station at 5th Street and Central Avenue in the City of Los Angeles and to construct certain facilities and make certain changes in the trackage of said railroads incidental to the maintenance and operation of such union passenger station at 5th Street and Central Avenue.

Both this Honorable Commission and the petitioner herein appeared as parties in said proceedings before the Interstate Commerce Commission and submitted evidence

in support of the contention that public necessity and convenience require the erection of a union passenger station by all three of the defendants above named at the Plaza site.

III

On the 6th day of July, 1925, said Interstate Commerce Commission rendered its decision in said proceeding initiated by the complaint of the City of Los Angeles vs. Los Angeles & Salt Lake Railroad Company, et al., Docket No. 14778 and in said proceedings initiated by the application of the Southern Pacific Company and Los Angeles & Salt Lake Railroad Company, Finance Dockets Nos. 3556 and 3569, in which said Interstate Commerce Commission, among other things, found and declared:

"That the present and future public convenience and necessity require and will require (a) the extension by defendants of their respective main lines of steam railroad in the city of Los Angeles, Calif., so as to reach and properly serve any union passenger station and terminal within that portion of said city bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue and the Los Angeles River, which they or any of them may [fol. 151] construct and establish in accordance with a lawful order of the Railroad Commission of California, and (b) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal."

And said Interstate Commerce Commission further stated:

"An order will be entered denying the application in Finance Docket No. 3569. We are not advised what action, if any, the Railroad Commission of California will take in connection with these matters, and under the existing circumstances we will issue no certificates or further orders at this time. We will retain jurisdiction of No. 14778 and Finance Docket No. 3556 for the purpose of making such further findings and orders and issuing such certificates as the record warrants. The findings and order now made are based upon the present record and upon the plans presented to us. If, in the development of a union passenger

terminal plan, the carriers or the Railroad Commission of California evolve a plan considerably more extensive than, or materially different from, a plan for a station within the Plaza area as here considered to be in the public interest, our ultimate findings as to the public convenience and necessity, and as to impairment of the carrier's ability to handle their own traffic and to perform their duties to the public, will of course be based upon a consideration of those facts rather than upon the present record."

IV

Petitioner alleges that no substantial change has occurred since the making of the said order by this Honorable Commission on the 6th day of December, 1921, nor since the making of the said order by the Honorable Interstate Commerce Commission on the 6th day of July, 1925, which would in any manner change or modify the conclusion that public convenience and necessity require the erection by said defendant railroads of a union passenger station within the Plaza area referred to and described in said decisions, but, on the contrary, petitioner alleges that public convenience and necessity require the construction by defendants of such union passenger station for the purpose of eliminating existing dangerous grade crossings and of providing adequate passenger facilities for the use and benefit of the traveling public of the city of Los Angeles [fol. 152] and surrounding communities.

Your petitioner believes that under the findings now made by the Interstate Commerce Commission and in accordance with the principles laid down by the United States Supreme Court in its decision above referred to this Honorable Commission now has jurisdiction to make such order or orders as may be justified by the evidence heretofore submitted and which may hereafter be submitted upon further hearing in this proceeding for the erection by said defendant railroads of a union passenger station within the Plaza site heretofore fixed by this Honorable Commission.

Wherefore petitioner prays that the Commission make its order re-opening this proceeding and setting the same for further hearing and that this Commission also make

such other or further orders as may be necessary or proper for the full consideration of all the issues heretofore considered in connection with the proposed erection by the defendant carriers of a union passenger station in the vicinity of the Plaza in the city of Los Angeles, and the elimination of such existing dangerous grade crossings in the city of Los Angeles as are incidental to the present operations of defendants' trains over the public streets in the City of Los Angeles and that upon the hearing and consideration of such evidence as may be presented, this Commission will make such order or orders as may be proper to require the erection by defendants of such union passenger station and the elimination of said existing dangerous grade crossings.

Central Development Association of Los Angeles, by F. W. Blanchard, President. Hugh Gordon, Attorney for Petitioner.

[fol. 153] *Duly sworn to by Hugh Gordon. Jurat omitted in printing.*

[fol. 154] BEFORE RAILROAD COMMISSION OF CALIFORNIA

Case No. 971

[Title omitted]

ORDER REOPENING CASE FOR FURTHER PROCEEDINGS

By the COMMISSION:

Petition for a re-opening of this case having been filed by Central Deevlopment Association of Los Angeles, and good cause therefor appearing,

It is hereby ordered that said Case No. 971 be, and the same is hereby re-opened, and that a hearing upon said matter be had before this Commission en banc in the Court Room of the Commission, 810 Pacific Finance Building, Los Angeles, California, on Monday, the 30th day of November, 1925, at 10:00 a. m.

Dated at San Francisco, California, this 3rd day of October, 1925.

H. W. Brundige, C. L. Seavey, George D. Squires, Ezra W. Decoto, Leon O. Whitsell, Commissioners. (Seal.)

[fol. 155] BEFORE RAILROAD COMMISSION OF CALIFORNIA

Case No. 970

THE MUNICIPAL LEAGUE, a Voluntary Organization of the Citizens of the City of Los Angeles, State of California, Complainant,

vs.

THE SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA & SANTA FE Railway Company, and San Pedro, Los Angeles & Salt Lake Railroad Company, Defendants.

Case. No. 971

THE CENTRAL DEVELOPMENT ASSOCIATION OF LOS ANGELES, a Voluntary Organization of the Citizens of the City of Los Angeles, State of California, Complainant,

vs.

THE SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA & SANTA Fe Railway Company, San Pedro & Santa Fe Railway Company, San Pedro, Los Angeles & Salt Lake Railroad Company, Defendants

Case No. 972

THE CIVIC CENTER ASSOCIATION OF LOS ANGELES, a Corporation of the Citizens of the City of Los Angeles, State of California, Complainant,

vs.

THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, TOPEKA, & Santa Fe Railway Company, San Pedro, Los Angeles & Salt Lake Railroad Company, Defendants

Case No. 974

THE CITY OF PASADENA, a Municipal Corporation, Complainant,

vs.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Defendants.

Case No. 980

THE CITY OF ALHAMBRA, a Municipal Corporation, Complainant,

vs.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC Company, Atchison, Topeka & Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Defendants

Case No. 981

THE CITY OF SAN GABRIEL, a Municipal Corporation, Complainant,

vs.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC Company, Atchison, Topeka & Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad [fol. 156] Company, and City of Los Angeles, Defendants

Case No. 983

THE CITY OF SOUTH PASADENA, a Municipal Corporation, Complainant,

vs.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC Company, Atchison, Topeka & Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Defendants

Application No. 3346

In the Matter of the Application of SOUTHERN PACIFIC COMPANY and LOS ANGELES AND SALT LAKE RAILROAD COMPANY for Approval of Agreement for Joint Terminal Facilities in Los Angeles, California

Hugh Gordon for Central Development Association;
James H. Howard, City Attorney, and Roscoe R. Hess, Deputy City Attorney, for City of Pasadena;
C. W. Durbrow for Southern Pacific Company;

A. S. Halsted and Fred E. Pettit, Jr., for Union Pacific and Los Angeles & Salt Lake Railroad Company;

E. W. Camp for The Atchison, Topeka & Santa Fe Railway Company;

Frank Karr for Pacific Electric Railway Company;

Jess E. Stephens, City Attorney, Milton Bryan, Deputy City Attorney, and Max Thelen, Special Counsel, for City of Los Angeles;

H. H. Sanborn, A. B. Roehl and Spencer Thorpe for W. H. Daum, Intervenor;

H. R. Brashear for Los Angeles Chamber of Commerce;

George A. Damon for Regional Planning Commission and City Planning Association;

Will D. Gould for Northwest Association.

DECISION No. 18593

OPINION

By the COMMISSION:

The facts and issues primarily involved in these proceedings, together with the early history thereof, are to be found in our prior Decisions Numbers 8901 and 9838 herein, [fol. 157] and require no repetition here.

Action of State Supreme Court

Subsequent to the rendition of Decision 9838, writs of review were obtained from the California Supreme Court by The Atchison, Topeka and Santa Fe Railway Company, the San Pedro, Los Angeles and Salt Lake Railroad Company and the Southern Pacific Company, and on December 19, 1922, that Court annulled our said Decision No. 9838 upon the ground that, by reason of the enactment by Congress of certain amendments to the Interstate Commerce Act in 1920,

"Full power and authority over the matter of union terminal depot facilities of the rairoads who are largely engaged in interstate commerce * * * has been vested in the Interstate Commerce Commission under the terms of said amendatory act of 1920, and that by virtue thereof the Railroad Commission of California * * * has been divested of the power, authority and jurisdiction over that

subject, sought by it to be exercised in the several proceedings before it and by the order presented for review herein." (The A. T. & S. F. Ry. Co. vs. Railroad Commission, 190 Cal. 214; 211 Pac. 460.)

Action of United States Supreme Court

Affirming this result, but upon narrower grounds, the United States Supreme Court, in proceedings brought before it under writs of certiorari obtained by this Commission, declared, on April 7, 1924, that the only question before it was "whether the power to direct a new union station with its incidents is committed exclusively to the Interstate Commerce Commission under the Act of 1920", and held that:

"Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of section 402 of the Transportation Act, the respondent railways can not be required to provide a new interstate union station and to extend their main tracks thereto as ordered by the State Railroad Commission."

The Court further said that such action requires

"a certificate of the Interstate Commerce Commission as a [fol. 158] condition precedent to the validity of any action by the carriers or of any order by the State Commission."

together with a finding

"that the expense involved will not impair the ability of the carriers concerned to perform their duty to the public." (Railroad Commission vs. Southern Pacific Company, 264 U. S. 331; 68 L. ed. 713.)

Action of Interstate Commerce Commission

Subsequent to the rendition of the California Supreme Court's decision above mentioned, but prior to that of the United States Supreme Court, the City of Los Angeles filed with the Interstate Commerce Commission a petition asking that these carriers be required to erect a union passenger station in the City of Los Angeles substantially in the manner ordered by this Commission in its Decision No. 9838

(I. C. C. Docket No. 14,778). With reference to this action, the United States Supreme Court declared that the course pursued by the City of Los Angeles was correct. This Commission intervened on behalf of the City in said proceeding, and after lengthy hearings, the Interstate Commerce Commission, on July 6, 1925, issued its order.

Upon the rendition of the decision of the United States Supreme Court two other applications were filed with the Interstate Commerce Commission. In the first of these (Finance Docket No. 3556), the Southern Pacific Company and Southern Pacific Railroad Company sought authority to abandon main line train operation over a portion of their railroad along Alameda Street in Los Angeles. In the second (Finance Docket No. 3569), these companies and the Los Angeles and Salt Lake Railroad Company together sought from the Interstate Commerce Commission certificates of public convenience and necessity approving a plan for the joint use of the present Southern Pacific passenger station in Los Angeles (sometimes referred to as the "Arcade Station") by said companies substantially in the manner requested several years ago by these carriers in Application 3346 before this Commission, which application had [fol. 159] been dismissed by us in our Decision 9838 herein. In its Decision of July 6, 1925, above mentioned, the Interstate Commerce Commission found that public convenience and necessity does not require the construction proposed and described in this connection, and the application of these carriers involving authority to construct extensions looking toward such joint use of the said Southern Pacific Station (Finance Docket 3569) was denied.

Upon the issue presented by the complaint of the City of Los Angeles, however, the Interstate Commerce Commission declared that the service afforded by the present passenger stations of the Atchison, Topeka & Santa Fe Railway and Los Angeles and Salt Lake Railroad is "unreasonable and inadequate", and that the expenditure of considerable sums of money must at once be made in order to provide reasonable and adequate facilities in lieu thereof; that railroad service, except industrial freight-switching service, should be eliminated from Alameda Street, and that such action will force the Southern Pacific Company either to provide new means of access to its Arcade Station or to

abandon the same and provide other facilities, the expenditure of substantial sums of money being required on the part of this carrier in either event. The Interstate body then found that these carriers are in a position to provide reasonable and adequate station facilities, and that "the expense involved will not impair their ability to perform their duties to the public." Thus the first requirement of the United States Supreme Court was met.

We shall not here recount in detail the discussion of the Interstate Commerce Commission upon the general subject of a union passenger terminal in Los Angeles. Suffice it to say that that body approved the selection of a site for such a union passenger terminal within a described area near the Plaza in Los Angeles which had been made in our Decision No. 9838 herein, and, upon consideration of the evidence before it, and after a discussion of the advantages of such [fol. 160] a solution of this problem, it declared that, in its opinion, a union passenger terminal could be erected upon the said Plaza area in compliance without former order for a sum aggregating approximately $9,500,000.00 or at a new money cost of about $5,500,000.00. A large portion of this particular site is already owned by the Southern Pacific Company. The Interstate Commerce Commission further declared that future extensions or enlargements at the Arcade site would be considerably more expensive in its opinion that at the Plaza area, and it added that

"Adequate and convenient union passenger terminal facilities can be provided in the Plaza area at a considerably less net new money cost than less adequate and convenient facilities under applicant's Arcade plan, and for approximately the same net new money cost as a union passenger terminal of more questionable merit on the present Arcade site."

The Interstate Commerce Commission then made the following findings:

"1. That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in the City of Los Angeles, Calif

"2. That neither the present nor future public convenience and necessity require or will require the construction or extension by applicants of new or existing main lines of railroad in the City of Los Angeles, Calif., as described in the application in Finance Docket No. 3569.

"3. That the present and future public convenience and necessity require and will require (a) the extension by defendants of their respective main lines of steam railroad in the City of Los Angeles, Calif., so as to reach and properly serve any union passenger station and terminal within that portion of said City bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue, and the Los Angeles River, which they or any of them may construct and establish in accordance with a lawful order of the Railroad Commission of California, and (b) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal.

[fol. 161] "4. That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

"5. That, in addition to the abandonment of service on Alameda Street as above authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the City of Los Angeles, Calif., or of the operation of all or any protion of the present interstate train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of terminal facilities, made necessary or proper in connection with the construction and establishment by defendants, in accordance with a lawful order of the Railroad Commission of California, of a union passenger station and terminal within that portion of said City described in paragraph 3 above.

"6. That the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the City of Los Angeles,

Calif., as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station and terminal as defendants or any of them, in accordance with a lawful order of the Railroad Commission of California, may construct and establish in that portion of said city described in paragraph 3 above, is in the public interest and is practicable, without substantially impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business.

"An order will be entered denying the application in Finance Docket No. 3569. We are not advised what action, if any, the Railroad Commission of California will take in connection with these matters, and under the existing circumstances we will issue no certificates or further orders at this time. We will retain jurisdiction of No. 14778 and Finance Docket No. 3556 for the purpose of making such further findings and orders and issuing such certificates as the record warrants. The findings and order now made are based upon the present record and upon the plans presented to us. If, in the development of a union passenger terminal plan, the carriers or the Railroad Commission of California evolve a plan considerably more extensive than, or materially different from, a plan for a station within the Plaza area as here considered to be in the public interest, our ultimate findings as to the public convenience and necessity, and as to impairment of the carriers' ability to handle their own traffic and to perform their duties to the public, will of course be based upon a consideration of those facts rather than upon the present record."

Thus the Interstate Commerce Commission provided for compliance with the second requirement of the United States Supreme Court.

[fol. 162] Further Proceedings Before this Commission

Subsequent to the rendition of this decision, and upon request of certain of the parties to these proceedings, this Commission reopened the above-entitled matters for further consideration and determination. Hearings were had before the Commission sitting en banc; evidence was taken from a large number of interested persons dealing with the

subject from every angle, and voluminous briefs have been filed.

In view of our previous findings and order herein, and of the order and decision of the Interstate Commerce Commission relating to this matter, it would appear that in these re-opened proceedings the chief question before us is whether, since the rendition of our Decision No. 9838 herein, any facts have developed or any events have occurred of such a character as to justify action on our part reversing the position which we have heretofore taken in this matter.

At the hearings in the re-opened proceedings, after making certain technical objections to our jurisdiction to proceed further with these matters—which objections were overruled—the carriers again presented their plan for a solution of the passenger terminal problem in Los Angeles by the use of separate facilities, including the joint use of the Arcade station of the Southern Pacific Company by that Company and the Salt Lake Railroad Company, together with the erection of a new station on the part of the Santa Fe at its present passenger station site. While we have listened to this testimony and have received briefs dealing with the subject, it is our opinion that, in view of the action of the Interstate Commerce Commission in this matter, we could not now—even if we were so disposed—authorize or direct the execution of this plan. The proposal of the carriers, as presented to us in these re-opened proceedings, is in all essential respects similar to that formerly presented to us in Application 3346, heretofore [fol. 163] dismissed by us, and also to that presented to the Interstate Commerce Commission in Finance Docket 3569, which was denied. Except for slight changes in detail, and save for certain other minor changes in the proposed participation of the Pacific Electric Railway Company in the plan, it is the same as hereinbefore dismissed. Although in these reopened proceedings, we have given full opportunity for the production of all testimony desired to be offered in support of this plan for separated facilities, nothing, in our opinion, has been added to the record already before us in this connection which would impel us to reverse our former opinion as to this proposal. We will, therefore, again dismiss this application on the part of the carriers.

Since the date of our Decision 9838, certain of the dangerous grade crossings along the Los Angeles River have been and are being eliminated by means of the erection of viaducts crossing the river and the railroad tracks lying adjacent thereto and on both sides thereof, under and by virtue of orders issued by this Commission in a proceeding known as Application No. 9671 filed by the City of Los Angeles, County of Los Angeles, Atchison, Topeka & Santa Fe, Los Angeles and Salt Lake and Pacific Electric Railway companies. The Alameda Street grade crossings have not as yet been eliminated, nor has the Southern Pacific Company moved to eliminate main line train movements thereover—though conditions at these crossings are admittedly becoming worse day by day—save by again pressing before this Commission and the Interstate Commerce Commission the carriers' plan for separated facilities herein dismissed. Moreover, the Alameda Street situation has been somewhat changed and apparently aggravated by the interjection of certain Salt Lake trains using a portion of that street as a means of temporary access to the Arcade Station. Some freight movements have been transferred by the Southern Pacific Company from Alameda Street to the river bank tracks, but the evidence indicates that the situation along [fol. 164] that street as a whole in no less aggravated than it was at the time of our former order herein.

Much evidence was introduced by the carriers in these reopened proceedings dealing with certain proposed participation of the Pacific Electric Railway, an electric street and interurban carrier and Southern Pacific subsidiary, in the carriers' separated facilities plan. There were also presented a number of proposals for union passenger terminals in the City of Los Angeles differing to a greater or less degree from those hitherto filed herein, and located both within the so-called Plaza site or area, as defined in our Decision No. 9838 herein, and in other locations. Such proposals were presented by W. H. Daum, who filed a complaint against these carriers (Case No. 2177) praying for an order directing them to erect a union passenger depot at a site on the east bank of the Los Angeles River between Seventh and Ninth Streets; by the Municipal League of Los Angeles for a "twin station" with head bouses on each side of the River near Sixth Street; by Mr. George D. Hall for a union station to face a new Plaza at the junction of

Spring Street and Sunset Boulevard; by the Allied Architects' Association, through Mr. Charles H. Cheney, for a station with head house fronting on Temple Street and Los Angeles Street, with tracks extending north from Temple Street between Los Angeles and San Pedro Streets; by Mr. Joseph A. Stark for a station in an area bounded by Los Angeles, San Pedro, First and Market Streets, fronting on Los Angeles Street; by Mr. A. D. Austin for a station in an area bounded by First, Plaza, Main and Los Angeles Streets; and, after inquiry upon our part, a plan prepared in the offices of the carriers for a station within the Plaza area considerably greater in extent and different in character from those heretofore presented for a station within that area.

We have carefully considered the testimony adduced in favor of each of these several proposals, together with the [fol. 165] briefs filed in support thereof, and while some of these plans appear to possess certain merit, it is our opinion that in the case of none of them has evidence or argument been produced before us sufficient to justify us in reversing our findings and rulings heretofore entered herein and presented to and approved by the Interstate Commerce Commission.

In this connection we should state that further testimony was presented, both by the City of Los Angeles and by certain members of this Commission's staff, upon the question of the availability, accessibility and propriety of the Plaza area, as defined in our Decision No. 9838 herein, and in the Decision of the Interstate Commerce Commission in Docket 14,778, for a union passenger terminal station in Los Angeles. Much testimony was also adduced from various sources dealing with the probable cost of such a station. This testimony, in our opinion, fails to support the contention made on many occasions by the carriers that this plan involves the expenditure of "from twenty-five to forty-five millions of dollars". We find no basis in the evidence before us which would make possible such a contention, and we are of the opinion that the findings made by the Interstate Commerce Commission, as briefly outlined above, to the effort that an adequate union passenger terminal station, together with the necessary facilities for access thereto, can be constructed within this area for an amount

approximating $9,500,000.00, and at a net new money cost not to exceed approximately $5,500,000.00, are not subject to serious question. Much of the testimony brought before us in these reopened proceedings concerned a proposal for a union station in the Plaza area presented by Mr. George S. Hill of this Commission's staff. (Commission's Exhibit 4-b herein.) This proposal is identical in all essential respects to the plan suggested by Mr. Hill before the Interstate Commerce Commission, that body having had it before it as illustrative of the possibilities of the Plaza area.

[fol. 166] In its analysis of probable costs, the Interstate Commerce Commission has set forth its conviction that adequate passenger terminal facilities can be constructed by these carriers in this area, together with all necessary trackage connections and rearrangement, for a sum which it declares to be reasonable and proper. We find in the testimony before us no reason to doubt that the findings of probable cost so made by the Interstate Commerce Commission are correct, and we are of the opinion that adequate passenger terminal facilities can be erected upon this site for a cost of approximately $10,000,000 gross, and of approximately $5,500,000.00 net new money.

The Interstate Commerce Commission has made its findings definitely denying the application of the carriers to put into effect their plan for separated passenger terminal facilities, and it has also found that upon the rendition of a lawful order of this Commission requiring the erection of a union passenger depot within this area under plans not materially differing from those presented to it, it will issue its certificates in connection with these matters under the requirement of the decision of the United States Supremen Court.

We shall therefore enter herein an appropriate order. The effectiveness of our order herein will be specifically conditioned upon the promulgation by the Interstate Commerce Commission of such further certificates and findings as may be necessary or proper to authorize the construction, extensions and abandonment herein directed, it being our intent and purpose that the further findings and certificates mentioned by the Interstate Commerce Commission in its Decision in its Docket No. 14,778 and its Finance Docket No. 3556 be made prior to this order going into effect. We

will direct our Attorney to call this matter to the attention of the Interstate Commerce Commission by proper petition.

[fol. 167] Order

Complaints and an Application having been filed, as above entitled, said matters having been reopened for further hearing and determination, hearings having been had, testimony having been presented, briefs having been filed, the said matters having been submitted for decision, the Commission having considered said testimony and briefs, and being now fully informed in the premises, and basing its order upon the findings hereinbelow set forth and upon such other findings and statements of fact as are included in the Opinion herein:

It is hereby found as a fact:

(1) That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific Company on Alameda Street from College Street to East Fifteenth Street, inclusive, in the City of Los Angeles.

(2) That neither the present nor future public convenience and necessity require or will require the construction or extension of new or existing main lines of railroad in the City of Los Angeles, as described in Application No. 3346 and in the record adduced herein.

(3) That the present and future public convenience and necessity require and will require (a) the extension by defendants in Cases Nos. 970, 971, 972, 974, 980, 981 and 983 of their main lines of steam railroad in the City of Los Angeles, so as to reach and properly serve a union passenger station and terminal within that portion of said City bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue, and the Los Angeles River, which they or any of them may construct and establish in accordance with our order herein, and (b) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight [fol. 168] routes incidental to the convenient and proper operation of such union passenger station and terminal.

(4) That the extensions referred to in the preceding paragraph are reasonably required in the interest of the

public convenience and necessity, and that in our opinion the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

(5) That, in addition to the abandonment of service on Alameda Street as above authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the City of Los Angeles, or of the operation of all or any portion of the present train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of terminal facilities, made necessary or proper in connection with the construction and establishment by defendants, in accordance with our order herein, of a union passenger station and terminal within that portion of said City described in paragraph three (3) above.

(6) That the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the City of Los Angeles, as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station as defendants or any of them, in accordance with our order herein, may construct and establish in that portion of said City described in paragraph three (3) above, is in the public interest, and is practicable, without, in our opinion, impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business.

(7) That the present and future public convenience and necessity require and will require the construction by defendants, Southern Pacific Company, The Atchison, To-
[fol. 169] peka & Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, of a union passenger station within that portion of the City of Los Angeles described in paragraph three (3) above, together with such tracks, connections, and all other terminal facilities and additions, improvements or changes in the existing railroad facilities of said defendants as may be reasonably necessary, convenient or incidental to the use of said union passenger station.

(8) That, in our opinion, an adequate union passenger station can be constructed within the said described por-

tion of said City at a cost of approximately ten millions of dollars, in substantial compliance with the plan outlined in Commission's Exhibit No. 4-b herein, which said plan is hereby found to be in all essential respects similar to that certain plan for a union passenger station in said area considered by the Interstate Commerce Commission to be in the public interest in its Order and Decision of July 6, 1925, in its Docket No. 14,778, to which reference has been made hereinabove.

(9) That said plan for a union passenger station in said portion of said City, in our opinion, is and would be in the public interest and that its construction is practicable, without, in our opinion, impairing the ability of these carriers to perform their respective duties to the public.

(10) That said construction ought reasonably to be made.

Wherefore it is hereby ordered:

(1) That the defendants, Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company, and the Los Angeles and Salt Lake Railroad Company, and each of them proceed to construct and thereafter operate a union passenger station within that portion of the City of Los Angeles bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue and the Los Angeles River, together with such tracks, connections, and all other terminal facilities and additions, extensions, improvements and changes in the existing railroad facilities of said Companies as may be reasonably necessary and in- [fol. 170] cidental to the use of said union passenger station, at a cost of approximately ten million dollars ($10,000,000), in substantial compliance with the plan outlined in Commission's Exhibit 4-b herein.

(2) Work upon the construction of said union passenger station shall commence within ninety (90) days after the effective date of this order, and shall be completed within three (3) years after said date.

(3) Upon and after the construction of said union passenger station the operation by defendant Southern Pacific Company of passenger and freight train service, excepting only industrial freight switching service during hours here-

inafter to be described by proper authority, over that portion of its railroad between College Street and East Fifteenth Street, inclusive, in the City of Los Angeles, shall be abandoned and discontinued.

This above Order shall be and become effective from and after the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates or other appropriate order or orders covering and authorizing the construction, extensions and abandonments herein authorized or directed, it being the intent of this Commission that the issuance of such certificates or other order or orders on the part of the Interstate Commerce Commission shall be and constitute a condition precedent to the effectiveness of the said Order of this Commission;

To which end,

It is hereby further ordered, that the Attorney of this Commission forthwith file with the Interstate Commerce Commission a copy of this Order, together with such appropriate petition or application as may be necessary in the premises, requesting and praying that the Interstate Commerce Commission issue such certificates or other appropriate order or orders as may be requisite or proper in order to render this Order effective.

[fol. 171] The Railroad Commission reserves the right to make such further order or orders in these proceedings relating to the Construction, operation, modification and abandonment of facilities, to costs and division of costs, and to all other matters relating thereto, as may be determined by the Commission to be just and reasonable and as public safety, convenience and necessity may require.

It is hereby further ordered, that Application No. 3346, as above entitled be and the same is hereby dismissed.

Dated at San Francisco, California, this 8th day of July, 1927.

Ezra W. Decoto, H. W. Brundige, C. L. Seavey, Leon O. Whitsell, Thos. S. Louttit, Commissioners.

Certified as a True Copy:

H. G. Mathewson, Secretary Railroad Commission of the State of California. (Seal.)

[fol. 172] BEFORE INTERSTATE COMMERCE COMMISSION

Los Angeles Passenger Terminal Cases

No. 14778[1]

CITY OF LOS ANGELES

v.

LOS ANGELES & SALT LAKE RAILROAD COMPANY et al.

Submitted November 17, 1927. Decided May 8, 1928

Upon Further Hearing of the Principal Complaint and of the Application in Finance Docket No. 3556

1. Conclusions of the original report, 100 I. C. C. 421, adhered to as to public convenience and necessity requiring the extension by defendants of their respective main lines or railroad in the city of Los Angeles, California, so as to reach and serve a union passenger station and terminal which they may construct in the Plaza district, pursuant to order of the Railroad Commission of the State of California to that effect, and the necessary extension of main lines and the abandonment of other portions of main lines to provide for incidental rearrangement of routes, and the abandonment of train service on Alameda Street; and such joint use is in the public interest and practicable, without impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle their own business. Certificate issued accordingly. Application in No. 14778 for the issuance of an order requiring the defendants to construct a union station, denied.

2. Application in Finance Docket No. 3556, being withdrawn and abandoned, dismissed.

Jess E. Stephens, Max Thelen, and Milton Bryan for city of Los Angeles; Carl I. Wheat and Reginald L.

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[1]This report also embraces Finance Docket No. 3556, in the Matter of the Application of Southern Pacific Company and Southern Pacific Railroad Company for Certificate of Public Convenience and Necessity.

Vaughan for Railroad Commission of the State of California.

C. W. Durbrow, Frank Karr, A. S. Halsted, and E. W. Camp for defendants in No. 14778.

Frank Karr and C. W. Durbrow for applicants in Finance Docket No. 3556.

H. H. Sanborn for W. H. Daum, intervener.

Report of the Commission on Further Hearing

[fol. 173] Aitchison, Commissioner:

The original report herein, adopted July 6, 1925, 100 I. C. C., 421, states the issues and the history of the litigation to that date. The matter is now before us, as will be shown, on petitions for final order filed by the city of Los Angeles, California and the Railroad Commission of the State of California, the answers of the defendant carriers thereto, and upon the further record, briefs, and oral argument thereon. In the instant proceeding we have before us Docket No. 14778, City of Los Angeles v. Los Angeles & Salt Lake Railroad Company et al., and Finance Docket No. 3556, In Re Application of Southern Pacific Company et al. for a certificate of public convenience and necessity. As will be shown, Finance Docket No. 3556 is before us upon the dismissal of the same by the applicants therein.

The issues presented by the complaint in No. 14778 were thus stated in the original report, 100 I. C. C. at page 422:

The city of Los Angeles is a municipal corporation of the State of California and complainant in No. 14778. Defendants are railroads engaged in interstate transportation of passengers and freight, and enter Los Angeles. The city asks that the commission direct defendants (1) to construct, operate, and use a union passenger depot with a defined area in that city, and to acquire land necessary therefor; (2) to abandon main-line passenger and freight service, except local freight switching, on and along a portion of Alameda Street in Los Angeles; (3) to eliminate and abandon certain railroad grade crossings in the city; and (4) to construct or acquire such structures, tracks, and facilities, to construct or abandon such lines or facilities of operation, and to arrange for such joint or other use of existing tracks, or tracks to be constructed within the city

of Los Angeles, as may be reasonably necessary and incidental as a part of and in furtherance of the foregoing. The only relief sought against defendant Pacific Electric Railway is the participation by it in the expense of constructing a viaduct at Aliso Street in Los Angeles to eliminate grade crossings on both banks of the Los Angeles River.

Finance Docket No. 3556, an application by Southern Pacific Company and its lessor, Southern Pacific Railroad Company, asked for a certificate of public convenience and necessity authorizing the abandonment of 0.15 miles of main-line track, and the abandonment of operation of passenger and freight train service (except freight switching service) on 6.6 miles of main-line track on Alameda Street, in Los Angeles.

The Railroad Commission of the State of California appeared in support of the complaint, as intervenor. Other interventions have been made for or against the complaint. [fol. 174] The somewhat involved history of the proceedings is set forth on pages 423 to 425 inclusive of our original report, and need not be restated in extenso. Briefly, the controversy originated in a complaint filed with the Railroad Commission of the State of California, which resulted in an order by that Commission for the elimination of certain specified railroad grade crossings along the Los Angeles River, and for the erection of a union passenger station at some site within a defined area in the vicinity of what is known as the Plaza in the City of Los Angeles, and upon the completion thereof for the railroads involved to remove all passenger and freight traffic except local-freight switching from a designated portion of Alameda Street. The Southern Pacific and the Los Angeles & Salt Lake presented to the California Commission their own plan for a joint station between those lines, known as the Arcade plan, which application after hearing was dismissed by the state Railroad Commission. The city of Los Angeles had previously taken no definite stand, but thereafter accepted the decision of the State Commission as determinative. Following a rehearing and certain modifications of the conclusions of the State Commission, which required the carriers to proceed to procure sufficient grounds for a union passenger station within a defined area, and to prepare and submit plans for a union station, and upon ap-

proval of the plans by the State Commission, to proceed with the construction of such station and terminal, and for the elimination of specified grade crossings, the State Commission's order was taken into the state courts of California. In Atchison, T. & S. F. Ry. Co. v. Railroad Commission, 190 Cal. 214, the order was held to be invalid, and the conclusion was sustained upon certiorari by the Supreme Court, R. R. Comm. v. Southern Pac. Co., 264 U. S. 331. Pending the review by the Supreme Court the complaint in No. 14778 was filed with us and heard, but it was not submitted until the Supreme Court had decided the case. After the Supreme Court's decision, the application in Finance Docket No. 3556 was filed, (with other applications not necessary here to be considered) and consolidated with No. 14778. The evidence previously received in the latter case was made available in the finance proceedings also. There was further hearing upon the consolidated cases, in June, 1924, followed by our report of July 6, 1925.

For convenient reference the findings made by us are reproduced in the margin.[1]

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[1]The findings, 100 I. C. C. 459, 461, are as follows:

Upon a consideration of all the facts of record we find:

1. That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in the city of Los Angeles, Calif.

2. That neither the present nor future public convenience and necessity require or will require the construction or extension by applicants of new or existing main lines of railroad in the city of Los Angeles, Calif., as described in the application in Finance Docket No. 3569.

3. That the present and future public convenience and necessity require and will require (a) the extension by defendants of their respective main lines of steam railroad in the city of Los Angeles, Calif., so as to reach and properly serve any union passenger station and terminal within that portion of said city bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue, and the Los Angeles River, which they or any of them may construct

[fol. 175] Subsequent to our decision, the Railroad Commission of the State of California reopened the matters pending before it for further consideration and determination. A voluminous record was made. The testimony of many interested parties, including citizens and experts others than representatives of the city of Los Angeles and of the carriers, was taken. The parties before the State Commission are the defendants in No. 14778 before us.

By decision entered July 8, 1927, made part of the record herein, the California Commission exhaustively reviewed [fol. 176] the general situation. The findings of fact made are stated in Appendix 1. The state Commission thereupon ordered that the defendants, Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company, and Los Angeles & Salt Lake Railroad Company, and each of them proceed to construct and thereafter operate a union passenger station within that portion of the city of Los Angeles bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue, and the Los Angeles River, (being the general locality previously referred to in our report and the record as the Plaza District) together with such tracks, connections, and all other terminal facili-

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and establish in accordance with a lawful order of the Railroad Commission of California, and (b) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal.

4. That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

5. That, in addition to the abandonment of service on Alamada Street as above authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the city of Los Angeles, Calif., or of the operation of all or any portion of the present interstate train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of terminal facilities, made necessary or proper in connec-

ties and additions, extensions, improvements, and changes in the existing railroad facilities of the defendants as might be reasonably necessary and incidental to the use of such union passenger station, at a cost of approximately $10,000,000, in substantial compliance with the plan outlined in the State Commission's exhibit known as Exhibit B-4.[2] It further ordered that work upon the construction of such union station should commence within 90 days after the effective date of its order, and be completed within three years after said date. Provision is made that upon and after the construction of such union passenger station the operation by the Southern Pacific Company of passenger and freight train service, excepting only industrial freight —switching service during the hours hereafter to be prescribed by proper authority, over that portion of its railroad (upon Alameda Street) between College Street and East Fifteenth Street, inclusive, in the city of Los Angeles, shall be abandoned and discontinued.

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tion with the construction and establishment by defendants; in accordance with a lawful order of the Railroad Commission of California, of a union passenger station and terminal within that portion of said city described in paragraph 3 above.

6. That the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the city of Los Angeles, Calif., as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station and terminal as defendants or any of them, in accordance with a lawful order of the Railroad Commission of California, may construct and establish in that portion of said city described in paragraph 3 above, is in the public interest and is practicable, without substantially impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business.

An order will be entered denying the application in Finance Docket No. 3569. We are not advised what action, if any, the Railroad Commission of California will take in

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[2] The plan submitted by the California Commission in the original hearing before us is essentially the same as that known as Exhibit B-4.

The order in express terms recites:

"This above order shall be and become effective from and after the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates or other appropriate order or orders covering and authorizing the construction, extensions, and abandonments herein authorized or directed, it being the intent of this Commission that the issuance of such certificates or of the order or orders on the part of the Interstate Commerce Commission shall be and constitute a condition precedent to the effectiveness of the said order of this Commission;"

[fol. 177] The State Commission therefore further ordered that its attorney forthwith file with us a copy of such order, together with appropriate petition or application requesting us to issue such certificates or other appropriate order or orders as may be requisite or proper in order to render the order of the State Commission effective.[3] The State

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connection with these matters, and under the existing circumstances we will issue no certificates or further orders at this time. We will retain jurisdiction of No. 14778 and Finance Docket No. 3556 for the purpose of making such further findings and orders and issuing such certificates as the record warrants. The findings and order now made are based upon the present record and upon the plans presented to us. If, in the development of a union passenger terminal plan, the carriers or the Railroad Commission of California evolve a plan considerably more extensive than, or materially different from, a plan for a station within the Plaza area as here considered to be in the public interest, our ultimate findings as to the public convenience and necessity, and as to impairment of the carrier's ability to handle their own traffic and to perform their duties to the public, will of course be based upon a consideration of those facts rather than upon the present record.

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[3]The State Commission made reservations of the right to make such further order or orders relating to construction, operation, modification, and abandonment of facilities and other matters as might be determined by it to be just and reasonable and as the public safety, convenience, and necessity may require.

Commission dismissed the application made by Southern Pacific Company and Los Angeles & Salt Lake Railroad Company for the approval of the construction of joint terminal facilities in Los Angeles, upon the lines of the Arcade plan proposed by those carriers to the State Commission as a substitute for the Plaza plan, so-called.

The California State Commission has filed with us its petition for final order. The prayer is that we issue such certificate or certificates and make and promulgate such further order or orders as may be proper or requisite in the premises to render effective the order of the California Commission, and for other appropriate relief. The petition of the city of Los Angeles for the issuance of certificates and the making of final order is somewhat more extensive than the petition of the California State Commission, but the relief sought is the same. It asks that we now issue the certificates and make the order specified in its petition, namely:

(1) Issue certificates in accordance with findings 1 to 6 in our report, 100 I. C. C. 459, 460.

(2) Order the defendants to construct and thereafter operate a union passenger station and appurtenances within the Plaza site * * * at a cost of approximately $10,000,000, in substantial compliance with the plan, Exhibit B attached to the petition; and

(3) Make such additional findings and orders, issue such further certificates, etc., as may be just and equitable and in the public interest.

The answers of the defendants to the petition of the California Commission are similar. They assert

(1) The unconstitutionality of the California statute and the procedure of the state commission thereunder,

(2) Deny that this Commission had fixed and adopted any area,

(3) Allege that the plan of the California Commission's order is not practicable, will be unreasonably expensive, will unreasonably interfere with other railroad operation,

particularly freight, and will not be in the interest of the public.

The defendants raise the constitutional issues as to the power of this Commission under the interstate commerce act.

[fol. 178] The answers to the petition of the city of Los Angeles are similar, with this qualification: they deny that our record is complete, and allege that subsequent to the rendition of decision by this Commission, nearly 3,000 pages of testimony and numerous and elaborate exhibits were introduced in the reopened proceedings before the Railroad Commission of California relating to matters which have not heretofore been submitted to or considered by us, which, it is alleged, show conclusively that it is not practicable to construct or operate a union passenger station in accordance with the plans and specifications referred to in the order of the California Railroad Commission.

Defendants therefore allege that it is essential that we give consideration to such evidence before rendering a decision and order herein.

The proceedings were set down by us for further hearing. Upon the further hearing, the record made and introduced before the Railroad Commission of the State of California, duly certified by it, was, by stipulation of all the parties, incorporated in the record herein, subject to the objections made during the course of the proceedings, and subject to the right of all parties to brief and argue the case as was made before us. This course, it may be observed, resulted in very considerable savings both of time and expense to the parties and the Government.

Finance Docket No. 3569 was heard and determined by us with the principal case, upon our former report. In it the Southern Pacific Company and the Los Angeles & Salt Lake sought authority to construct certain main new lines, and to extend their existing main lines so as to permit joint use and operation by them of the existing passenger station of the Southern Pacific, known as the Arcade site, hereinbefore referred to, and so as to permit the removal of Southern Pacific passenger and freight trains, except industrial switching, from Alameda Street. As appears by our former report, this application we denied. The

Southern Pacific and the Los Angeles & Salt Lake allege that the application in Finance Docket No. 3556 was filed in conjunction with and as complementary to Finance Docket No. 3569, but that the latter application having been denied, it becomes necessary to continue to operate service as heretofore, and therefore the applicants do not desire to abandon the lines or service described in the application in Finance Docket No. 3556, and therefore dismiss, abandon, and withdraw the application. At the present stage of these proceedings before us, the Arcade plan is therefore not within the issues. The only plan before us, it is agreed by the parties, is the Plaza plan, prepared by the Railroad Commission of California, and accepted and supported by the City of Los Angeles through its designated municipal offices, also known in the record as Exhibit 4-B before the California Commission.

It will be observed that our findings of fact in the original report, previously set out, are in effect duplicated by findings numbered 1 to 6 of the Railroad Commission of the State of California in its decision of July 8, 1927, as appears in Appendix No. 1 hereto. The State Commission in addition found (7) that the present and future public convenience and necessity require and will require the construction by defendants and each of them of a union pas- [fol. 179] senger station within that portion of Los Angeles described in the third finding, with the track and other facilities reasonably necessary, convenient, or incidental to the use of such passenger station; (8) that in its opinion an adequate union passenger station could be constructed within the described portion of the city at a cost of approximately $10,000,000, in substantial compliance with the plan outlined in its exhibit No. 4-B, which is found to be in all essential respects similar to the plan considered by us in our original decision and report; (9) that such plan for a union passenger station in the Plaza portion of Los Angeles in the opinion of the State Commission, is and would be in the public interest, and that its construction is practicable, without impairing the ability of the defendants to perform their respective duties to the public; and (10) that such construction ought reasonably to be made.

The matter before us presents questions of fact and of law.

The record before us is voluminous. It embraces the original and further hearing before us, and record made before the California commission after our original report. At the original hearing, by appropriate reference large portions of the record made in the original hearings together with voluminous exhibits before the State Commission were incorporated.

It would be easy to prolong this report into almost interminable length by undertaking detailed and meticulous examination of the facts disclosed of record. But they have been repeatedly subjected to scrutiny—first by the State Commission upon its original hearing and upon its rehearing, secondly in the original proceedings before us, and thirdly in the reopened proceedings before the State Commission. It seems, therefore, sufficient merely to state our general conclusions with respect to the sufficiency of the facts previously found by us, and those as found by the California Commission in its additional findings, previously set forth, and supported by the record. All of the testimony of record in the original proceeding before us was examined and given careful analysis in our original report. We adhere to the conclusions there expressed, upon a further consideration of the whole record, including the subsequently imported testimony taken before the California Commission. In our judgment, the findings of the California Commission numbered 7 to 10 inclusive, as appears in the appendix and as above summarized, find sufficient support in the record. We may therefore turn to the questions of law involved.

Coming first to those raised by the defendants: (1) Questions as to the constitutionality of the California statute and the procedure of the State Commission thereunder, certainly are not within our administrative purview at this state of the proceedings. (2) The objections made to the constitutionality of provisions of the Transportation Act 1920, under which we are vested with authority in certain instances to order the construction or extension of new lines and facilities of railroad carriers, need not now be discussed by us, in view of our determination upon the application by the complainant and the California State Commission for a mandatory order requiring such construction. (3) Complainants have again raised the question whether

[fol. 180] we have power to require the defendants to construct and operate a union passenger station upon the site heretofore specified in our findings. Their contention that we have such power was pressed with vigor upon the original submission before us. The complainants point to section 3, paragraph (3) and (4) of the interstate commerce act as furnishing the necessary statutory authority. As stated in the original report, at page 430, we concluded that we are not empowered to require the construction of a union passenger station as sought in No. 14778, under the issues framed in the complaint therein. In addition to the authorities previously brought to our attention, the complainant cites Breckenridge Chamber of Commerce v. W. F., R. & F. W. R. R. Co., 109 I. C. C. 81, in which, by Division 5, it was stated that under that portion of paragraph (3) of section 3 of the act which requires that all carriers shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, we have the power to deal with an issue as to the establishment of a switch connection between the tracks of railroads, and to make an affirmative order if warranted by the record. Pittsburgh and West Virginia Ry. Co. v. L. E., A. & W. R. R., 81 I. C. C. 333, was there cited as authority. In Alabama & Vicksburg Ry. Co. v. Jackson & Eastern Ry. Co., 271 U. S. 244, 250, the Supreme Court said:

"In matters relating to the construction, equipment, adaptation and use of interstate railroad lines, with the exceptions specifically set forth in paragraph (22), Congress has vested in the Commission the authority to find the facts and thereon to exercise the necessary judgment. The Commission's power under paragraph (3) of Sec. 3 to require the establishment of connections between the main lines of carriers was asserted by it in Pittsburgh & W. V. R. Co. v. Lake Erie, A. & W. R. Co., 81 I. C. C. 333, a case decided after the withdrawal by the Jackson & Eastern of its application to the Commission for leave to make the junction at Curran's Crossing, and in Chamber of Commerce v. Wichita Falls, R. & Ft. W. R. Co., 109 I. C. C. 81. That its jurisdiction is exclusive was held in People ex rel. New York C. R. Co. v. Public Service Commission, 233 N. Y. 113, 119-121. Compare Lake Erie, A. & W. R. Co. v. Public Utilities Commission, 109 Ohio St. 103."

The distinction between a simple switch connection such as was contemplated by the cases previously referred to, and the elaborate facilities sought to be required by us in the present case, is obvious. Re-examination of the whole subject again leads us to the conclusion that under existing law we are not empowered to require the construction of a union passenger station of the character sought by the complaint; but that we are authorized to find (1) whether the present or future public convenience and necessity permits of the proposed abandonment of line, (2) whether the proposed extensions of line are reasonably required in the interest of public convenience and necessity, and whether the expenses involved therein will impair the ability of defendants to perform their duties to the public, and (3) whether such joint use of existing terminal facilities by other than the owning carriers, as would be necessary if a new union passenger station were established in the Plaza area, is in the public interest and practicable, without substantially impairing the ability of the owning carrier to [fol. 181] handle its own business. These are the conclusions which we reached upon the original presentation.

All issues of fact having been considered and concluded by our original report and this report on further hearing, nothing remains for us but to deny the application of the city of Los Angeles and the intervener, the Railroad Commission of the State of California, for a final order herein requiring the construction of a station as found in the public interest; but in lieu thereof issue an appropriate certificate of public convenience and necessity conformable to the findings herein; and to dismiss the application in Finance Docket No. 3556. An appropriate certificate and order will be entered.

EASTMAN, Commissioner, concurring in part:

I am in accord with what is done in this case, except that I believe that we should enter the order which complainants seek requiring defendants to construct and operate the union station. From the standpoint of public policy I am inclined to the view that the power over such matters should rest with the States, subject to a limited supervision on our part under paragraph (18) of section 1. But it is by no means certain that such is the law, and there are

cogent reasons which, as I see it, justify us in entering the desired order.

The history of the case is significant. Complainants at first sought and obtained an order from the California commission. This was resisted by defendants, upon the ground that Congress had exclusively occupied the field and that the power to order rested with us. This view of the matter was accepted by the Supreme Court of California. Upon appeal the Supreme Court of the United States in R. R. Comm. v. Southern Pac. Co., 264 U. S. 331, stated the question before the court as follows:

Our only question here is whether the power to direct a new union station with its essential incidents is committed exclusively to the Interstate Commerce Commission under the Act of 1920.

It cannot be said that this question was clearly answered. The concluding paragraphs of the opinion were as follows:

We were advised by statements at the bar that, after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with the Interstate Commerce Commission asking for an order to provide, maintain, and use a union station; that a hearing followed and that, pending the decision in this Court, the matter is held under consideration.

For the reasons given, we think the course taken by the City of Los Angeles was the correct one. Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of section 402 of the Transportation Act, the respondent railways cannot be required to provide a new interstate union station and to extend their main tracks thereto as ordered by the State Railroad Commission.

The judgment of the Supreme Court of California is affirmed.

[fol. 182] It will be noted that the court held that the City of Los Angeles, in asking us for an order to provide, maintain, and use a union station, took a correct course; and that it also affirmed the judgment of the California court, which had plainly held that "full power and authority over the matter of union terminal depot facilities of the rail-

roads which are largely engaged in interstate commerce, and who are the petitioners herein, has been vested in the Interstate Commerce Commission." However, the language immediately preceding this affirmation, with respect to action by us under paragraphs (18) to (21) of section 1 of the interstate commerce act, does lend itself to the interpretation which the majority place upon our powers, and there is other language in the opinion which is susceptible of such an interpretation.

The defendants have now shifted their position. In their brief before the Supreme Court they said that

> the sole and exclusive power to enter orders such as were entered by the California commission has been vested in the Interstate Commerce Commission by the amendments made to the Interstate Commerce Act in 1920.

Their position now is that Congress has indeed occupied the field in paragraph (3) of section 3, but that neither the State nor the Nation has power to enter an order requiring the construction of the station, and that our only power is to grant such certificates of convenience and necessity as may be required where a carrier is voluntarily proposing new station construction.

Whether or not we have the power to enter an order is not free from doubt, but I believe that from paragraph (21) of section 1 and paragraphs (3) and (4) of section 3 such power may be derived. Possibly no one of these paragraphs fully covers the ground, but they so supplement each other than when taken together their individual deficiencies disappear.

Paragraph (21) authorizes us to require a carrier "to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this Act, and to extend its line or lines". The term "car service" is confined in the Act to service in the transportation of property, and therefore limits to that extent our authority to require a carrier to provide itself with "safe and adequate facilities". There is no similar limitation, however, upon our authority to require a carrier "to extend its line or lines". Under this paragraph, therefore, we clearly may require in the instant case such new

track construction as is involved in the union station project. But this leaves the station building unprovided for.

Paragraph (3) of section 3 makes it the duty of carriers, among other things, to "afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines". It is this provision, as stated above, upon which defendants rely in contending that Congress has exclusively occupied the field in question. In our previous decision we assumed, without deciding, that this provision "makes it the duty of carriers to maintain union-station facilities in [fol. 183] a case where separate facilities would not be reasonable and proper", and I think that this assumption was correct. Apparently it is conceded by the carriers. However, our conclusion was that we have no authority to enter an order to enforce this duty. This conclusion was largely predicated upon United States v. Pennsylvania R. R. Co., 242 U. S. 208, a case which arose before the transportation act, 1920, and decided that we could not require defendant to provide and furnish oil tank cars. There we had chiefly relied upon our power under section 15 to prescribe just and reasonable "practices", and the court held that this word was too obscure to justify an order requiring a special type of tank cars to be provided. But the act, as it then existed, did make it the duty of carriers to furnish "such transportation" including by reference "cars and other vehicles and all instrumentalities of shipment or carriage", upon reasonable request therefor, and the court intimated that the jurisdiction to enforce this duty was in the courts and not in this Commission. By analogy this supports the position of the majority here, although it seems that the meaning of the word "practices" was the dominant feature of the case, and there is here no reliance upon section 15 or upon that word.

However, since our previous decision in this case, we have ourselves decided in Pittsburgh & West Virginia Ry. Co. v. L. E. A. & W. R. R., 81 I. C. C. 333, and in Chamber of Commerce, Breckenridge, Texas v. W. F., R. & F. W. R. Co., 109 I. C. C. 81, that we have the power to enforce by affirmative order the provisions of paragraph (3) of sec-

tion 3, and the Supreme Court has referred with approval to these cases in Alabama & Vicksburg Ry. Co. v. Jackson & Eastern Ry. Co., 271 U. S. 244. They related to the establishment of switch connections, and the majority here distinguished them by saying that the "distinction between a simple switch connection such as was contemplated by the cases previously referred to, and the elaborate facilities sought to be required by us in the present case is obvious". The logic of this is not clear. In our previous decision we held, upon authority of the Supreme Court decision in the tank-car case, that power to enforce paragraph (3) of section 3 is in the courts rather than in us. It now appears that so far, at least, as that paragraph requires switch connections, we can enforce it. But if we can enforce it in one of its aspects why not in all? There is nothing in the paragraph which distinguishes between little duties and big duties, or gives us power to enforce the one and not the other. Inasmuch as the Supreme Court has intimated that we can enforce paragraph (3) in one respect it follows necessarily, it seems to me, that we can enforce it in all respects.

Paragraph (4) of section 3 empowers us, if we find it to be practicable and in the public interest, to require the use of the terminal facilities of one carrier by another. Of this paragraph the Supreme Court said in R. R. Comm. v. Southern Pac. Co., supra:

> It gives to the Interstate Commerce Commission the power and duty, where the public interest requires, to make out of what is the passenger and freight station of one interstate carrier, a union station or depot.

[fol. 184] As I see it, the questions here with respect to this paragraph are: (1) Whether the authority can be exercised when no carrier is seeking such exercise, i. e. whether we can require a carrier against its will to condemn a part of the property of another; and (2) whether the power can be exercised to compel the use of property not in any carrier's possession? As for the first question, there is nothing in the language of the paragraph, or of the Supreme Court above quoted, to indicate that the authority of this paragraph can be invoked only upon petition of

some carrier, or that there must be at least one willing carrier. As for the second question, it was mentioned by the Supreme Court in the above-cited case. The court remarked that it was urged that

> the supervisory power thus conferred does not include the installation of an interstate union station, where its terminals and main tracks are newly built, and the interstate carriers are compelled to expropriate, not the terminal property of another interstate carrier, but property of others than carriers, not theretofore used for terminals,

and it went on to say:

> This would be giving power to the Interstate Commerce Commission to provide for a small and contracted union station of interstate carriers limited to the terms of one carrier, and would leave the larger and more important union stations of interstate carriers to the control of state commissions.

This comment, is seems to me, certainly does not suggest that we have no power the "larger and more important union stations". Moreover, complainants now point out that it has developed in the meantime that at least two-thirds of the property needed for the new station is already in the possession of the carriers, and that the expropriation of only a limited amount of private property will be necessary to round out the situation.

My conclusion is that, considering the various statutory provisions together, we probably have power to enter the desired order. But this is not the only reason for such action. Certainly a conclusion that we have no power to enter an order is at least subject to much doubt. Certainly, also, the carriers propose to litigate this case as long and as vigorously as they can. The least possible delay in determining legal questions and arriving at an end of litigation will result, I believe, if we, as well as the State commission, enter an order: This aspect of the matter was strongly and persuasively presented by complainants. In view of the manifest uncertainly as to what the law is, it is a course which we are quite justified in following and the one which is most likely to result in a needed clarification of the law.

I am authorized to state that Commissioners Lewis and McManamy join in this expression.

[fol. 185] BRAINERD, Commissioner, dissenting:

In this case certificates of public necessity and convenience are proposed to be issued upon complaint by the City of Los Angeles and others, not upon the application of any carrier, and in fact over the objection and protest of all the defendant carriers. Paragraphs (18) to (21) of section 1, it seems to me, relate to rights sought to be exercised by the carriers. That they deal primarily with such rights in certain. C. C. C. & St. L. v. U. S., 72 L. Ed., 166, 168. For this reason, and for the further reason that our action fails, it seems to me, to give due consideration to the necessity for the economical management of existing transportation facilities, I dissent from the report herein.

Certificate and Order

AT A GENERAL SESSION OF THE INTERSTATE COMMERCE COMMISSION, HELD AT ITS OFFICE, IN WASHINGTON, D. C., ON THE 8TH DAY OF MAY, A. D. 1928.

Los Angeles Passenger Terminal Cases

No. 14778

Abandonment of Line by SOUTHERN PACIFIC CO. and SOUTHERN PACIFIC R. R. CO.

Finance Docket No. 3556

A further hearing and investigation of the matters and things involved in these proceedings having been had, and the commission having, on the date hereof, made and filed a report on further hearing containing its findings of fact and conclusions thereon, and having on July 6, 1925, filed its original report herein, 100 I. C. C. 421, which said reports are hereby referred to and made a part hereof:

It is hereby, certified, That the present and future public convenience and necessity (1) require the construction by the Los Angeles & Salt Lake Railroad Company, the Southern Pacific Company, and the Atchison, Topeka & Santa Fe Railway Company of extensions of their respective

main lines of railroad in the city of Los Angeles, Calif., so as to reach and serve a union passenger station and terminal which they may construct in the Plaza district, pursuant to the order of the Railroad Commission of the State of California to that effect; (2) require the construction of the necessary extensions of their main lines, and permit the abandonment of such other portions of their main lines, as may be necessary to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal; (3) permit the abandonment of opera-
[fol. 186] tion of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in the city of Los Angeles, Calif.; and (4) require the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the city of Los Angeles, Calif., as may be incidental, and necessary or convenient, to the proper operation of such union passenger station and terminal.

It is ordered, That the applications in No. 14778, in so far as they seek an order requiring the construction of a union passenger station and terminal in Los Angeles, Calif., be, and it is hereby, denied.

And it is further ordered, That the joint application of the Southern Pacific Company and the Southern Pacific Railroad Company in Finance Docket No. 3556 be, and it is hereby, dismissed.

By the commission.

George B. McGinty, Secretary. (Seal.)

[fol. 187] Appendix No. 1

The findings of fact by the Railroad Commission of the State of California are as follows:

(1) That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific Company on Alameda Street from College Street to East Fifteenth Street, inclusive, in the City of Los Angeles.

(2) That neither the present nor future public convenience and necessity require or will require the construction or extension of new or existing main lines of railroad in the City of Los Angeles, as described in Application No. 3346 and in the record adduced herein.

(3) That the present and future public convenience and necessity require and will require (a) the extension by defendants in Cases Nos. 970, 971, 972, 974, 980, 981 and 983 of their main lines of steam railroad in the City of Los Angeles, so as to reach and properly serve a union passenger station and terminal within that portion of said city bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue, and the Los Angeles River, which they or any of them may construct and establish in accordance with our order herein, and (b) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal.

(4) That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that in our opinion the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

(5) That, in addition to the abandonment of service on Alameda Street as above authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the City of Los Angeles, or of the operation of all or any portion of the present train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of terminal facilities, made necessary or proper in connection with the construction and establishment by defendants, in accordance with our order herein, of a union passenger station and terminal within that portion of said city described in paragraph three (3) above.

(6) That the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the City of Los An-

geles, as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station as defendants or any of them, in accordance with our order herein, may construct and establish in that portion of said city described in paragraph three (3) above, is in the public interest and is practicable, without in our opin- [fol. 188] ion, impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business.

(7) That the present and future public convenience and necessity require and will require the construction by defendants, Southern Pacific Company, The Atchison, Topeka & Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them of a union passenger station within that portion of the City of Los Angeles described in paragraph three (3) above, together with such tracks, connections, and all other terminal facilities and additions, improvements or changes in the existing railroad facilities of said defendants as may be reasonably necessary, convenient or incidental to the use of said union passenger station.

(8) That, in our opinion, an adequate union passenger station can be constructed within the said described portion of said city at a cost of approximately ten millions of dollars, in substantial compliance with the plan outlined in Commission's Exhibit No. 4-b herein, which said plan is hereby found to be in all essential respects similar to that certain plan for a union passenger station in said area considered by the Interstate Commerce Commission to be in the public interest in its order and decision of July 6, 1925, in its Docket No. 14,778, to which reference has been made hereinabove.

(9) That said plan for a union passenger station in said portion of said city, in our opinion, is and would be in the public interest and that its construction is practicable, without, in our opinion, impairing the ability of these carriers to perform their respective duties to the public.

(10) That said construction ought reasonably to be made.

[fol. 189] BEFORE RAILROAD COMMISSION OF CALIFORNIA

DECISION No. 19810

Case No. 970

THE MUNICIPAL LEAGUE, a Voluntary Organization of the Citizens of the City of Los Angeles, State of California, Complainant,

v.

THE SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, and SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY, Defendants

Case No. 971

THE CENTRAL DEVELOPMENT ASSOCIATION OF LOS ANGELES, a Voluntary Organization of the Citizens of the City of Los Angeles, State of California, Complainant,

v.

THE SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY, Defendants

Case No. 972

THE CIVIC CENTER ASSOCIATION OF LOS ANGELES, a Corporation of the Citizens of the City of Los Angeles, State of California, Complainant,

v.

THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY, Defendants

Case No. 974

THE CITY OF PASADENA (a Municipal Corporation), Complainant,

v.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY, and CITY OF LOS ANGELES, Defendants

Case No. 980

THE CITY OF ALHAMBRA (a Municipal Corporation), Complainant,

v.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY, and CITY OF LOS ANGELES, Defendants

Case No. 981

THE CITY OF SAN GABRIEL (a Municipal Corporation), Complainant,

v.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY, and CITY OF LOS ANGELES, Defendants

[fol. 190] Case No. 983

THE CITY OF SOUTH PASADENA (a Municipal Corporation), Complainant,

v.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA & SANTA FE RAILWAY COMPANY, SAN PEDRO, LOS ANGELES & SALT LAKE RAILROAD COMPANY, and CITY OF LOS ANGELES, Defendants

Application No. 3346

In the Matter of the Application of SOUTHERN PACIFIC COMPANY and LOS ANGELES & SALT LAKE RAILROAD COMPANY for Approval of Agreement for Joint Terminal Facilities in Los Angeles, California

ORDER DENYING REHEARING

By the COMMISSION:

Petitions for rehearing with respect to matters determined in the above entitled proceedings by our Order dated

July 8, 1927, having been filed by The Atchison, Topeka & Santa Fe Railway Company, Southern Pacific Company, Southern Pacific Railroad Company, and Los Angeles and Salt Lake Railroad Company; the Commission having considered the said petitions for rehearing, and each and every allegation contained therein, and being of the opinion that no good cause for a rehearing is therein made to appear,

Now, therefore, it is hereby ordered that the said petitions for rehearing be and the same are hereby severally denied.

Dated at San Francisco, California, this 26th day of May, 1928.

Leon O. Whitsell, C. L. Seavey, Ezra W. Decoto, Thos. S. Louttit, W. J. Carr, Commissioners.

Certified as a true copy.

H. G. Mathewson, Secretary Railroad Commission, State of California. (Seal.)

[fol. 191] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

[Title omitted]

PETITION FOR WRIT OF REVIEW—Filed June 19, 1928

To the Honorable William H. Waste, Chief Justice, and the Associate Justices of the Supreme Court of the State of California:

Your petitioners above named respectfully represent:

I

That at all the times herein mentioned your petitioner Southern Pacific Company has been, and now is, a corporation created and existing under and by virtue of laws of the State of Kentucky; and that your petitioner Southern Pacific Railroad Company has been at all the times herein mentioned, and now is, a corporation incorporated and consolidated under the laws of the states of California, Arizona and New Mexico.

Southern Pacific Railroad Company is the owner of certain lines of steam railroads extending through the city of Los Angeles from its termini in the state of California through the states of Arizona and New Mexico to the Rio Grande River in the state of New Mexico, and that said [fol. 192] lines of railroad so owned by Southern Pacific Railroad Company are leased to and operated by Southern Pacific Company as a common carrier for hire for the carriage of freight and passengers in intrastate commerce in the state of California and interstate and foreign commerce from and to and through points in the state of California, including the city of Los Angeles in said state. Said lines of railroad form a component, integral and essential part of an interstate system of steam railroads connected one with the other acquired, owned and held by Southern Pacific Railroad Company, and maintained and operated by Southern Pacific Company as a unit and as an interstate system for the transportation of freight and passengers in interstate and intrastate commerce within and through the states of Oregon, California, Nevada, Utah, Arizona and New Mexico, and are operated as a system for the transportation of freight and passengers in interstate commerce between and among said last mentioned states, said lines extending through the city of Los Angeles, State of California, and that said lines of railroad and said petitioners are, and each of them is, and have been, during all the times hereinafter mentioned subject to the jurisdiction of the government of the United States and of the Interstate Commerce Commission, in accordance with the provisions of the Act to Regulate Commerce, approved February 4, 1887, and amendments thereto.

That Southern Pacific Railroad Company joins as a party in this petition with Southern Pacific Company because it is pecuniarily interested, and its property rights are affected by the decisions and orders made and entered by respondents as hereinafter alleged and because as owner of the terminal facilities at the city of Los Angeles operated by said Southern Pacific Company under said lease, as aforesaid, it will suffer detriment and irreparable damage and great financial loss in the event said decisions and orders are made effective.

[fol. 193] That respondents, Leon O. Whitsell, C. L. Seavey, Ezra W. Decoto, Thos. S. Louttit, and W. J. Carr are the duly appointed, qualified and acting members of the Railroad Commission of the state of California.

II

That your petitioners hereby apply to the Supreme Court of the state of California for a writ of review for the purpose of having the lawfulness of a certain order and decision of the Railroad Commission of the state of California inquired into and determined, the order and decision being that certain order and decision issued by the Railroad Commission of the state of California under date of July 8, 1927, designated as Decision No. 18,593, a copy of which order is hereto attached and marked Exhibit "A," and made a part hereof, in the consolidated cases entitled The Municipal League v. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company, Case No. 970; Central Development Association of Los Angeles v. Southern Pacific Company, The Atchison Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company, Case No. 971; Civic Center Association of Los Angeles v. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and San Pedro, Los Angeles and Salt Lake Railroad Company, Case No. 972; City of Pasadena v. Pacific Electric Railway Company, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company and City of Los Angeles, Case No. 974; City of Alhambra v. Pacific Electric Railway Company, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company and City of Los Angeles, Case No. 980; City of San Gabriel v. Pacific Electric Railway Company, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and [fol. 194] Salt Lake Railroad Company, and City of Los Angeles, Case No. 981; City of South Pasadena v. Pacific Electric Railway Company, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company,

San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Case No. 983; and the Matter of the application of Southern Pacific Railroad Company, Southern Pacific Company, and Los Angeles and Salt Lake Railroad Company for approval of agreement for joint terminal facilities in Los Angeles, California, Application No. 3346.

The issuance of said writ of review is hereby prayed for by your petitioners for the purpose of determining whether said Railroad Commission has regularly pursued its authority in the making of said order and decision, and whether said Railroad Commission is vested with power and authority to enter said order and decision, including the determination as to whether said order and decision violates any right of petitioners under the Constitution or laws of the United States or of the state of California.

III

That heretofore to-wit: On the 3rd day of July, 1916, complaints were filed with the said Railroad Commission by the Municipal League, Central Development Association, Civic Center Association of Los Angeles, praying for the elimination of certain railroad grade crossings within the city of Los Angeles; and the establishment of a union passenger station in said city; and thereafter complaints were filed by the city of Pasadena; city of Alhambra, city of San Gabriel and city of South Pasadena, praying for an order requiring carriers named to make certain changes specified in said complaints with reference to grade crossings, and praying an order of the Commission rescinding an order, previously entered by the Commission, establishing an interlocking plant at Aliso Street and Los Angeles river.

Thereafter, to-wit, on November 22, 1917, Southern Pacific Railroad Company, and Los Angeles & Salt Lake Rail- [fol. 195] road Company filed an application with said Commission for an order approving an agreement executed by the said applicants under date of July 18, 1917, providing for the joint use and operation of the passenger station owned by Southern Pacific Railroad Company and operated by Southern Pacific Company in said City of Los Angeles, and providing for the joint use of tracks and

terminal facilities of applicants, and providing for the elimination of grade crossings in said city of Los Angeles.

That thereafter said Railroad Commission ordered that the several cases hereinbefore specified in paragraph II hereof be consolidated and said Railroad Commission on its own motion ordered a general investigation thereof to be made.

IV

That thereafter, to-wit, on the 26th day of April, 1921, after public hearings, the Commission rendered its decision and order No. 8901 hereinabove referred to and hereto attached, marked Exhibit "B." and made a part hereof.

V

That thereafter, to-wit, on the 10th day of May, 1921, and within the time provided by law, your petitioners filed with the said Railroad Commission a petition for rehearing in said cases, No. 8901, a copy of which is hereto attached, marked Exhibit "C" and made a part hereof,

VI

That thereafter a rehearing of the said decision and order theretofore rendered by said Commission was had and thereafter to-wit, on the 6th day of December, 1921, said Commission rendered its opinion and order on said rehearing, designated as Decision No. 9838, a copy of which is attached hereto, marked Exhibit "D," and made a part hereof.

VII

That thereafter, to-wit, on the 17th day of December, [fol. 196] 1921, and within the time provided by law, your petitioners filed with said Railroad Commission a petition for rehearing in said cases, Decision No. 9838, a copy of which is hereto attached, marked Exhibit "E," and made a part hereof.

That thereafter, to-wit, on the 28th day of December, 1921, a decision and order was rendered by said Commission in said cases, denying said petition for rehearing.

VIII

That thereafter, to-wit, on or about the 5th day of January, 1922, your petitioners filed with your Honorable Court their petition for writ of review, which writ was issued January 7, 1922, returnable February 6, 1922.

That thereafter your Honorable Court reviewed said order of the California Railroad Commission, and on the 19th day of December 1922, annulled said decisions No. 8901 and No. 9838 of the Railroad Commission of the state of California.

IX

That thereafter on the 3rd day of October, 1925, the Railroad Commission of the State of California ordered that said Cases 970, 971, 972, 974, 980, 981, 983, and Application 3346 be reopened for further consideration, and that further hearing be had before the Commission.

That thereafter, to-wit, on the 8th day of July, 1927, after public hearings, the Railroad Commission of the state of California rendered its decision and order No. 18,593 hereinabove referred to and hereto attached, marked Exhibit "A," and made a part hereof.

That thereafter, to-wit, on the 18th day of July, 1927, and within the time provided by law, your petitioners filed with said Railroad Commission of the state of California, an application for rehearing in said cases, in words and figures as follows, to-wit:

[fol. 197] "Before the Railroad Commission of the State of California

Case No. 970

The Municipal League, a Voluntary Organization of the Citizens of the City of Los Angeles, State of California, Complainant,

vs.

The Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company, and San Pedro, Los Angeles & Salt Lake Railroad Company, Defendants

Case No. 971

THE CENTRAL DEVELOPMENT ASSOCIATION OF LOS ANGELES, a Voluntary Organization of the Citizens of the City of Los Angeles, State of California, Complainants,

vs.

THE SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA & Santa Fe Railway Company, San Pedro & Santa Fe Railway Company, San Pedro, Los Angeles & Salt Lake Railroad Company, Defendants

Case No. 972

THE CIVIC CENTER ASSOCIATION OF LOS ANGELES, a Corporation of the Citizens of the City of Los Angeles, State of California, Complainant,

vs.

THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, TOPEKA & Santa Fe Railway Company, San Pedro, Los Angeles & Salt Lake Railroad Company, Defendants

Case No. 974

THE CITY OF PASADENA, a Municipal Corporation, Complainant,

vs.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Defendants

Case No. 980

THE CITY OF ALHAMBRA, a Municipal Corporation, Complainant,

vs.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Defendants

Case No. 981

THE CITY OF SAN GABRIEL, a Municipal Corporation, Complainant,

vs.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Defendants

[fol. 198] Case No. 983

THE CITY OF SOUTH PASADENA, a Municipal Corporation, Complainant,

vs.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC Company, Atchison, Topeka & Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Defendants

Application No. 3346

In the Matter of the Application of SOUTHERN PACIFIC COMPANY and LOS ANGELES AND SALT LAKE RAILROAD COMPANY, for Approval of Agreement for Joint Terminal Facilities in Los Angeles, California

Application for Rehearing by Southern Pacific Company and Southern Pacific Railroad Company

Southern Pacific Company, a corporation created and existing under and by virtue of the laws of the State of Kentucky, and Southern Pacific Railroad Company, a corporation organized, existing and consolidated under the laws of the States of California, Arizona and New Mexico, respectfully petition the Railroad Commission of the State of California to grant a rehearing in the above entitled matter, upon the following grounds:

I

Southern Pacific Railroad Company is the owner of certain lines of steam railroads extending through the City

of Los Angeles from its termini in the State of California through the States of Arizona and New Mexico to the Rio Grande River in the State of New Mexico, and that said lines of railroad so owned by Southern Pacific Railroad Company are leased to and operated by Southern Pacific Company as a common carrier for hire for the carriage of freight and passengers in intrastate commerce in the State of California, and interstate and foreign commerce from and to and through points in the State of California, including the City of Los Angeles, in said State. Said lines of railroad form a component, integral and essential part of an interstate system of steam railroads, connected one with the other, acquired, owned and held by Southern [fol. 199] Pacific Railroad Company and maintained and operated by Southern Pacific Company as a unit and as an interstate system for the transportation of freight and passengers in interstate and intrastate commerce within and through the States of Oregon, California, Nevada, Utah, Arizona and New Mexico, and are operated as a system for the transportation of freight and passengers in interstate commerce between and among said last mentioned States, and said lines extending through the city of Los Angeles, State of California, and that said lines of railroad and said petitioners are, and each of them is, and have been, during all the times hereinafter mentioned, subject to the jurisdiction of the Interstate Commerce Commission, in accordance with the provisions of the Interstate Commerce Act.

That the Commission's decision and order entered in the above entitled matters are beyond the power which the Railroad Commission of the State of California could constitutionally exercise, and is in contravention of and repugnant to Section 8 of Article 1 of the Constitution of the United States.

That said decision and order are beyond statutory power which has been confided to the State Commission by the State of California and the Public Utilities Act passed by the legislature of the State of California.

The Commission's decision and order are predicated upon a mistake of law for the reasons hereinafter alleged.

The Commission's decision and order are not supported by the evidence, but are contrary to the evidence, and the findings and conclusions of the Commission, upon which

the decision and order are predicated, are, therefore, without foundation, contrary to the law and void.

That said decision and order, if permitted to become effective, will confiscate your petitioners' property and deprive them of their property without due process of law, [fol. 200] and deny them the equal protection of the law, contrary to the provisions of the 5th and 14th Amendments to the Constitution of the United States.

II

The provisions of said decision and order requiring these applicants, and their co-defendant carriers, to-wit, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, to make and construct a Union passenger station within that portion of the City of Los Angeles bounded by Commercial Street, North Main Street, Redondo Avenue, Alhambra Avenue and the Los Angeles River, together with such tracks, connections, and all other terminal facilities and additions, extensions, improvements and changes in the existing railroad facilities of these applicants and their co-defendants as may be reasonably necessary and incidental to the use of said Union Passenger Station, at a cost of approximately $10,000,000.00, in substantial compliance with plan outlined in Commission's Exhibit 4-B herein, are unlawful; and that the requirements of said order that defendant Southern Pacific Company perform or aid in the performing of such work, or any thereof, are unlawful and void.

That the provisions of said decision and order requiring these applicants, and their co-defendant carriers, to commence work upon the construction of said Union Passenger Station within ninety days after the effective date of said order, and complete the same within three years after said date, are unlawful.

That the provisions of said decision and order requiring these applicants, upon and after the construction of said Union Passenger Station, to abandon and discontinue the operation of passenger and freight service, excepting only industrial freight switching service over that portion of its railroad between College Street and East 15th Street, inclusive in the City of Los Angeles, are unlawful and void.

That the present passenger station and passenger facili-

[fol. 201] ties of these applicants fully meet the requirements of the public and are adequate for that purpose; there is no evidence that such facilities are inadequate; and said decision and order, in paragraph (1) (p. 17) thereof, requiring or purporting to require the Southern Pacific Company in conjunction with other carrier defendants to acquire additional land, much of which is held by the City of Los Angeles and dedicated to public streets and municipal purposes, and the construction thereon of a union passenger station and buildings incidental thereto, is unlawful.

That said decision and order are further unlawful and against the law in this; that in and by said decision and order, and in and by the necessary force and effect thereof, the State of California through the California Railroad Commission, by the requirement that Southern Pacific Company share the use of these applicants' railroad terminal facilities and their main line track or tracks for a reasonable distance beyond their said terminal, with another and other or other railroad carriers, and by the requirement that the said carrier co-defendants of these applicants share with applicants the use of said carrier defendants' railroad terminal facilities and their main line track or tracks for a reasonable distance beyond their said terminals without compensation for the property so taken and appropriated and for the damage to their and each of their remaining terminal facilities and property and business not taken but which constitutes a part of the property so taken and used, is beyond the jurisdiction of the Railroad Commission of the State of California, and is taking from these applicants their property for public use without compensation, contrary to the Fifth and Fourteenth Amendments to the Constitution of the United States, and contrary to the provisions of the Constitution of the State of California, and deprives these applicants of their property without due process of law, and denies to these applicants the equal protection of the law, contrary to the provisions of the [fol. 202] Constitution of the State of California and contrary to the provisions of Section 1 of the Fourteenth Amendment to the Constitution of the United States.

III

The evidence does not prove or show that public convenience, interest or safety require the abandonment of

operation of all passenger and freight train service except industrial freight switching service on the main line of the Southern Pacific Company on Alameda Street from College Street to East Fifteenth Street in the City of Los Angeles; and the Commission in said order, in finding that the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service except industrial switching service on the main line from College Street to East Fifteenth Street, inclusive, in the city of Los Angeles, acted without any or sufficient evidence to justify said finding; and the evidence shows that the present facilities and passenger station of these applicants are adequate, and said order in requiring Southern Pacific Company to abandon and destroy its present facilities and station and the use thereof without compensation, is unlawful and denies to these applicants the equal protection of the laws, and deprives these applicants of their property without due process of law and takes their property for public use without compensation, contrary and repugnant to the provisions of the Constitution of the State of California, and contrary and repugnant to the provisions of the Fifth and Fourteenth Amendments to the Constitution of the United States.

IV

There is no evidence, and the Commission erred in finding that the present and future public convenience and necessity require and will require the construction of a new structure, to wit, a union passenger station and buildings and trackage incidental thereto, to secure adequate service [fol. 203] or facilities for the performance by said Southern Pacific Company and Southern Pacific Railroad Company of their absolute public utility duties and functions, either in the district bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue, and the Los Angeles River, in the City of Los Angeles, or elsewhere in said city.

V

That said decision and Order No. 18593 is unlawful and is against the law in this: that in and by said decision and

order and by the necessary force and effect thereof, the State of California and the State of California through the California Railroad Commission, is permitted to and does deprive those applicants of their property without due process of law, and denies to them and each of them, the equal protection of the law, requiring the installation of large and expensive additions and betterments and requires the procuring of large funds of new capital where extensions of main line are necessary and where acquisitions of large areas of property and the dedication thereof to public use is necessary; and is unlawful and void and deprives these applicants of their property without due process of law and without compensation, and is in violation of and in contravention of the Fourteenth Amendment to the Constitution of the United States; the securing of such funds for new investment and dedication to a new public use is not within the power and authority of the State of California or the Railroad Commission of the State of California to require or authorize; such expensive addisitions and betterments require the procuring of funds for that purpose, which cannot be procured except by the issuance of securities, the authority and supervision over which is conferred by the Statutes of the United States upon the Interstate Commerce Commission, and particularly by Section 20A of the Interstate Commerce Act, and the Interstate Commerce Commission cannot require or authorize the issuance of such securities except upon the application [fol. 204] of the applicants, and the functions of the Railroad Commission of the State of California cannot be combined with the functions of the Interstate Commerce Commission so as to confer jurisdiction upon either the Interstate Commerce Commission or the California Railroad Commission, or both, in the matters embraced within said decision and order and the said order and decision are therefore repugnant to the provisions of Section 8 of Article I and Section 1 of the Fourteenth Amendment to the Constitution of the United States. Said order requires the abandonment of adequate terminal facilities and main line tracks, concerning the adequacy of which there is no evidence to the effect that they are inadequate and not satisfactory to meet the public convenience and necessity of

applicants for many years to come, and thereby said order and decision deprive these applicants of their property without due process of law and appropriates the same for public use without compensation, and denies to them and each of them the equal protection of the laws, contrary to the force and effect of the Constitution of the State of California and of the United States of America. Said decision and order requiring applicants to seek and secure franchises to operate their said railroad across and along public streets which applicants do not desire to acquire, to raise and invest large sums of new capital and to make new and additional extensions contemplated by said order and to locate, construct and operate a union passenger station, and to require the dedication of said new property and funds and capital to public use would be taking the property of said applicants and of their several shareholders without due process of law, and also denying to these applicants and each thereof, and to their shareholders and each thereof, the equal protection of the laws, in that their property will be taken and appropriated and dedicated to public use without just or any compensation, while all other classes of persons are guaranteed by the California Con- [fol. 205] stitution that their property shall not be taken or damaged or dedicated to the public use without just compensation.

VI

These applicants further specify and claim that said decision and order are unlawful in this: that by said decision and order the obligations of a contract made and entered into by and between the State of California and Southern Pacific Railroad Company, predecessor in interest of applicant Southern Pacific Railroad Company, the lessor of Southern Pacific Company, the applicant herein, under and by virtue of the laws of the State of California and the grant thereby made to said Southern Pacific Railroad Company and the acceptance of said grant and right by the filing of its articles of incorporation and by the construction of its railroad commencing at the City and County of San Francisco, and running thence to and through the City of Los Angeles to San Pedro in Los Angeles County, California, and from and in and through the City of Los Ange-

les to the Colorado River and to other places, cities and towns in the State of California as shown by the evidence in this proceeding, are held, decided and adjudged to be impaired and abrogated subsequent to the making of said contract, in contravention of and repugnant to the provisions of Article I, Section 10 of the Constitution of the United States, and Section 1 of the Fourteenth Amendment to the Constitution of the United States.

VII

These applicants further specify and claim that said decision and order are unlawful in this: that by said decision and order the obligations of a contract made and entered into by and between the City of Los Angeles, California, and Southern Pacific Railroad Company, the predecessor in interest of applicant Southern Pacific Railroad Company, the lessor of Southern Pacific Company, applicant, under and by virtue of the laws of the State of California [fol. 206] and the charter of the City of Los Angeles, and the grant thereby made to said Southern Pacific Railroad Company by the ordinance authorizing the construction and operation of its railroad in Alameda Street in said city, and the acceptance of said grant and the right by the construction and operation of its railroad commencing at the City and County of San Francisco and running thence to and through the City of Los Angeles to San Pedro in said County, and from, in and through the City of Los Angeles to the City of Santa Monica, and from, in and through the City of Los Angeles to the City of Santa Ana in Orange County, California, and from, in and through the City of Los Angeles to the Colorado River and to other places, cities and towns in the State of California, as shown by the evidence in this proceeding, are held, decided and adjudged to be impaired and abrogated subsequent to the making of said contract, contrary to the provisions of Article I, Section 10 of the Constitution of the United States, and Section 1 of the Fourteenth Amendment to the Constitution of the United States.

VIII

The provisions of said decision and order requiring these applicants and The Atchison, Topeka & Santa Fe Railway

Company and the Los Angeles & Salt Lake Railroad Company and each of them, to secure and construct and thereafter operate a union passenger station within that portion of the City of Los Angeles bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue and the Los Angeles River, together with such tracks, connections and all other terminal facilities and additions, improvements or changes in the existing railroad facilities of said railroad companies as may be reasonably necessary, convenient or incidental to the use of said passenger station, at a cost of approximately ten million dollars, in substantial compliance with the plan outlined in Commission's Exhibit No. 4-b in these proceedings, by the necessary force and effect thereof is an attempt by the State of California [fol. 207] and the State of California through the California Railroad Commission to require these applicants and their several stockholders to acquire new and additional property and dedicate the same to public use without compensation, and that said orders are unlawful and void, and the power to so require said applicants and their stockholders to acquire such new and additional property and to construct such new and additional facilities and dedicate the same to public use without just or any compensation, is not within the State of California nor the State of California through the California Railroad Commission, nor any other governmental agency, and are in contravention of the provisions of the Fifth and Fourteenth Amendments to the Constitution of the United States.

IX

The Commission has failed and neglected to directly determine and decide the fundamental issue in these proceedings, namely, questions relating to the elimination of grade crossings in the City of Los Angeles, but has attempted to compel defendants to eliminate said grade crossings indirectly by ordering applicants and said Atchison, Topeka & Santa Fe Railway Company and said Los Angeles and Salt Lake Railway Company to join in the location, construction and operation of a union passenger station and other facilities specified in said order within the area described in said order but remote from the main lines of applicants and said co-defendants and has, for these reasons, exceeded the juris-

diction with which this Commission has been vested by the Constitution and laws of the State of California and in contravention of the decisions of the Supreme Court of the State of California and the Supreme Court of the United States and in contravention of the provisions of the Fifth and Fourteenth Amendments to and Section One of Article Eight of the Constitution of the United States and in contravention of the Constitution of the State of California.

Wherefore these applicants respectfully pray that the [fol. 208] said Commission set aside its said findings, decisions and orders, and that a rehearing be had of the above entitled matters; that a time and place be appointed by the Commission for the hearing of said application, and that applicants be afforded an opportunity to present argument in support thereof; and that upon such rehearing the said findings, decisions and orders be amended, modified, set aside and vacated to meet the objections and exceptions above specified.

That pending the final determination of this application, said decisions and orders heretofore entered be suspended and stayed, and that applicants have such further and other relief as may be meet and proper.

Respectfully submitted.

Southern Pacific Company, by Paul Shoup, Vice-President, by G. L. King, Assistant Secretary. (Corporate Seal.) Southern Pacific Railroad Company, by B. A. McAllister, Vice-President, by G. L. King, Secretary. (Corporate Seal.) C. W. Durbrow, 65 Market Street, San Francisco, California; Frank Karr, 670 Pacific Electric Bldg., Los Angeles, California, Attorneys for Applicants.

[fol. 209] City and County of San Francisco,
State of California, ss:

G. L. King, being by me first duly sworn, deposes and says that he is the Assistant Secret ary of Southern Pacific Company, one of the applicants in the above entitled matter; that he has read the foregoing application for rehearing and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters which

are therein stated upon information or belief, and as to those matters that he believes it to be true.

G. L. King.

Subscribed and sworn to before me this 16th day of July, 1927. Frank Harvey, Notary Public in and for the City and County of San Francisco, State of California. (Notarial Seal.)

Filed Railroad Commission, State of California, July 16, 1927. H. G. Mathewson, Secretary.

X

That thereafter, to-wit, on the 26th day of May, 1928, a decision and order, designated as Decision No. 19810, was rendered by said Commission in said cases, Decision No. 18593, denying said petition for rehearing, copy of which decision No. 19810 is hereunto attached, marked Exhibit F and made a part hereof.

XI

That said order and decision of respondents so made on the 8th day of July, 1927, designated as Decision No. 18593, was and is erroneous and contrary to law in the particulars and for the reasons and upon the grounds set forth in said application of your petitioners for rehearing in the copy of said petition next hereinbefore set forth in full, all of which particulars, reasons and grounds are hereby referred to and relied upon as set forth at large herein.

That in making said decision and order respondents did not regularly pursue their authority and that respondents [fol. 210] had no jurisdiction, power or authority to render said decision and order and that respondents exceeded the power and authority vested in them by the provisions of the Public Utilities Act of the State of California in entering said decision and order, in the particulars set forth in said application for rehearing set forth at large hereinabove.

XII

That unless the operation and enforcement of said decision and order, designated as Decision No. 18593, entered and rendered by respondents, be stayed and suspended dur-

ing the pendency of the writ of review hereinafter prayed for, great and irreparable injury will result to your petitioners.

Wherefore petitioners pray for an order of said Supreme Court of the State of California, directing the issuance of a writ of review for the purpose of inquiring into and determining the lawfulness of said Decision and Order of respondents, designated as Decision No. 18593, and the order of said respondents denying petitioner's application for a rehearing designated as Decision No. 19810, and of inquiring into and determining whether said respondents regularly pursued their authority in issuing said orders and decisions, and whether said respondents are invested with power or authority to enter said orders and decisions, and whether said orders and decisions violate any right of petitioners under the Constitution or laws of the United States or the State of California; that such writ be made returnable not later than thirty (30) days after the issuance thereof; that said court by said writ direct said respondents to certify fully to this court at a specified time and place a transcript of all the records and proceedings in said cases numbered 970, 971, 972, 974, 980, 981 and 983, and said application No. 3346; that the same may be reviewed by this court.

And your petitioners further pray that during the pend- [fol. 211] ency of said writ of review the operation and enforcement of said Decision and Order, designated as No. 18593, entered and rendered by respondents be stayed and suspended.

And your petitioners further pray that upon the return of said writ and the record certified to by said Commission therewith, that said order of said Commission be set aside, vacated, cancelled and annulled, and that said cases be dismissed, and for such other and further relief in the premises as may be proper.

C. W. Durbrow, 65 Market Street, San Francisco, California; Frank Karr, 670 Pacific Electric Building, Los Angeles, California, Attorneys for Petitioners. Louis W. Myers and Guy V. Shoup, of Counsel.

City and County of San Francisco,
State of California, ss:

D. P. Ewing, being first duly sworn, deposes and says: That he is an officer, to-wit, assistant secretary, of Southern Pacific Company, one of the petitioners named in the above entitled action; that he has read the foregoing petition for writ of review and that the same is true except as to those matters which are therein stated upon information or belief, and as to those matters that he believes it to be true.

D. P. Ewing.

Subscribed and sworn to before me this 19th day of June, 1928. Frank Harvey, Notary Public in and for the City and County of San Francisco, State of California.

[fols. 212-240] "Petitions of Atchison, Topeka and Santa Fe Railway Company for Writ of Review, S. F. No. 13056, and of Los Angeles & Salt Lake Railroad Company for Writ of Review, S. F. No. 13057, omitted in printing because they are substantially the same as Petition of Southern Pacific Company et al, for Writ of Review, S. F. No. 13058."

[fol. 241] In Supreme Court of California

No. S. F. 13058

[Title omitted]

Writ of Review—Filed Aug. 6, 1928

The People of the State of California to Railroad Commission of the State of California and Leon O. Whitsell, C. L. Seavey, Ezra W. DeCoto, Thos. S. Louttit, W. J. Carr, members of and constituting said Railroad Commission, respondents:

Whereas, it has been represented to this Court by the verified petition of petitioners above named on file herein that you, said Railroad Commission of the State of California, and Leon O. Whitsell, C. L. Seavey, Ezra W. DeCoto,

Thos. S. Louttit, W. J. Carr, members of and constituting said Railroad Commission, have made and rendered a decision and order, No. 18593, against petitioners in those certain proceedings pending before you entitled as follows:

[fol. 242] BEFORE THE RAILROAD COMMISSION OF THE STATE OF CALIFORNIA

Decision No. 18593

Case No. 970

THE MUNICIPAL LEAGUE, a Voluntary Organization of the Citizens of the City of Los Angeles, State of California, Complainant,

vs.

THE SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA & Santa Fe Railway Company, and San Pedro, Los Angeles & Salt Lake Railroad Company, Defendants

Case No. 971

THE CENTRAL DEVELOPMENT ASSOCIATION OF LOS ANGELES, a Voluntary Organization of the Citizens of the City of Los Angeles, State of California, Complainant,

vs.

THE SOUTHERN PACIFIC COMPANY, ATCHISON, TOPEKA & Santa Fe Railway Company, San Pedro & Santa Fe Railway Company, San Pedro, Los Angeles & Salt Lake Railroad Company, Defendants

Case No. 972

THE CIVIC CENTER ASSOCIATION OF LOS ANGELES, a Corporation of the Citizens of the City of Los Angeles, State of California, Complainant,

vs.

THE SOUTHERN PACIFIC COMPANY, THE ATCHISON, TOPEKA & Santa Fe Railway Company, San Pedro, Los Angeles & Salt Lake Railroad Company, Defendants

Case No. 974

THE CITY OF PASADENA, a Municipal Corporation, Complainant,

vs.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC Company, Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Defendants

[fol. 243] Case No. 980

THE CITY OF ALHAMBRA, a Municipal Corporation, Complainant,

vs.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC Company, Atchinson, Topeka & Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Defendants

Case No. 981

THE CITY OF SAN GABRIEL, a Municipal Corporation, Complainant,

vs.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC Company, Atchison, Topeka & Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company and City of Los Angeles, Defendants

Case No. 983

THE CITY OF SOUTH PASADENA, a Municipal Corporation, Complainant,

v.

PACIFIC ELECTRIC RAILWAY COMPANY, SOUTHERN PACIFIC Company, Atchison, Topeka & Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company and City of Los Angeles, Defendants

Application No. 3346

In the Matter of the Application of SOUTHERN PACIFIC COMPANY and LOS ANGELES AND SALT LAKE RAILROAD COMPANY for Approval of Agreement for Joint Terminal Facilities in Los Angeles, California

[fol. 244] and

Whereas, it has been further represented to this Court by said petitioners that said order and decision, No. 18593, is erroneous and void and that the Commission has not regularly pursued its authority, and that the decision and order violates rights of the petitioners under the Constitution of the United States and of the State of California, for reasons set forth at length in said petition, and which fully appear from said petition on file herein, reference thereto being hereby made.

And being willing that the records and proceedings in said matter, upon which said decision and order, No. 18593, is based, and that all matters relating thereto shall be certified and returned by you to this Court;

You, said Railroad Commission of the State of California, and Leon O. Whitsell, C. L. Seavey, Ezra W. DeCoto, Thos. S. Louttit, W. J. Carr, members of and constituting said Railroad Commission, are hereby commanded to certify or cause to be certified and returned to this Court on the 6th day of August, A. D. 1928, at two o'clock P. M. on said day at the Court room of this Court in the State Building, at the Northwest corner of Polk and McAllister Streets in the City and County of San Francisco, California, a full, true and correct transcript of all papers, records, exhibits, files and proceedings in the said proceedings above specified pending before you, with all things touching the same as fully and entirely as it remains before you, in your possession or under your control, in order that the same may be reviewed by this Court and such action taken thereon as of right and as according to law shall be taken and done and that you then and there have this writ.

Witness the Honorable William H. Waste, Chief Justice, [fol. 245] and the Associate Justices of the Supreme Court of the State of California.

Attest my hand and seal and the seal of this Court this 7th day of July, A. D. 1928.

B. Grant Taylor, Clerk of said Court, by I. Erb, Deputy Clerk Supreme Court of the State of California. (Seal.)

Endorsed: Received service and a copy of the within Writ this 7th day of July, 1928. Carl I. Wheat, Attorney for Respondents.

[File endorsement omitted.]

[fols. 246-254] "Writs of Review, S. F. No. 13056 and S. F. No. 13057, are substantially identical as to form and substance as the Writ of Review issued out of the Supreme Court of the State of California upon the petition of Southern Pacific Company et al. dated July 7, 1928, S. F. No. 13058; omitted in printing."

[fol. 255] IN SUPREME COURT OF CALIFORNIA

S. F. No. 13056, S. F. No. 13057, S. F. No. 13058

[Titles omitted]

[fol. 256] RETURN TO WRITS OF REVIEW—Filed Aug. 7, 1928

I, H. G. Mathewson, Secretary of the Railroad Commission of the State of California, respondent herein, do hereby certify to the Supreme Court of the State of California:

That as Secretary of the Railroad Commission of the State of California I have kept a true and complete record of the pleadings, transcript of testimony, exhibits, record and proceedings in those certain proceedings before the Railroad Commission entitled as follows:

The Municipal League vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, and San Pedro, Los Angeles and Salt Lake Railroad Company, Case No. 970;

Central Development Association of Los Angeles vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, and San Pedro, Los Angeles and Salt Lake Railroad Company, Case No. 971;

Civic Center Association of Los Angeles vs. Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, and San Pedro, Los Angeles and Salt Lake Railroad Company, Case No. 972;

City of Pasadena, a municipal corporation, vs. Pacific Electric Railway Company, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Case No. 974;

City of Alhambra, a municipal corporation, vs. Pacific Electric Railway Company, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Case No. 980.

[fol. 257] City of San Gabriel, a municipal corporation, vs. Pacific Electric Railway Company, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Case No. 981;

City of South Pasadena, a municipal corporation, vs. Pacific Electric Railway Company, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, San Pedro, Los Angeles and Salt Lake Railroad Company, and City of Los Angeles, Case No. 983; and—

In the Matter of the Application of Suthern Pacific Railroad Company, Southern Pacific Company and Los Angeles and Salt Lake Railroad Company for approval of agreement for joint terminal facilities in Los Angeles, California, Application No. 3346.

That filed herewith are the transcripts of testimony in said proceedings, together with all exhibits, pleadings and orders of the Railroad Commission of the State of California made and filed therein, and that the same constitute the full, true and complete record in the proceedings in the above-entitled matters before the Railroad Commission of the State of California.

In witness whereof I have hereunto set my official signature and affixed the seal of the State of California this 6th day of August, 1928.

H. G. Mathewson, Secretary Railroad Commission of the State of California. (Seal.)

[File endorsement omitted]

[fol. 258] IN SUPREME COURT OF CALIFORNIA

In Bank

S. F. 13056, S. F. 13057, S. F. 13058

[Titles omitted]

MINUTE ENTRY OF CONSOLIDATION, ETC.—Aug. 6, 1928

Hearings on return to writ of review. Pursuant to stipulation on file, ordered matters consolidated for hearing and determination and on one set of briefs. Respondent to file brief within sixty (60) days and petitioners thirty (30) days thereafter to reply, matters there upon to be submitted. Stipulated and ordered that order of Railroad Commission be stayed in accordance with form of order to be filed with the Clerk of this Court.

[fol. 259] [File endorsement omitted]

IN SUPREME COURT OF CALIFORNIA

S. F. No. 13056. In Bank. May 27, 1930

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (a Corporation), Petitioner,

v.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA and LEON O. Whitsell, C. L. Seavey, Ezra W. Decoto, Thomas S. Louttit, and W. J. Carr, as Members of and Constituting said Railroad Commission, Respondents

S. F. No. 13057. In Bank. May 27, 1930

LOS ANGELES & SALT LAKE RAILROAD COMPANY (a Corporation), Petitioner,

v.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA and LEON O. Whitsell, C. L. Seavey, Ezra W. Decoto, Thomas S. Louttit, and W. J. Carr, as Members of and Constituting said Railroad Commission, Respondents

S. F. No. 13058. In Bank. May 27, 1930

SOUTHERN PACIFIC COMPANY (a Corporation) and SOUTHERN PACIFIC RAILROAD COMPANY (a Corporation), Petitioners,

v.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA and LEON O. WHITSELL, C. L. SEAVEY, EZRA W. DECOTO, THOMAS S. LOUTTIT, and W. J. CARR, as Members of and Constituting said Railroad Commission, Respondents

Applications for certiorari to review orders of the Railroad Commission of California requiring applicants to es- [fol. 260] tablish and construct a union passenger station in the City of Los Angeles. Order affirmed.

For Petitioners: E. W. Camp, Robert Brennan, M. W. Reed, E. T. Lucey, Leo E. Sievert, A. S. Halstead, Fred E. Pettit, Jr., C. W. Durbrow, Frank Karr; Louis W. Myers and Guy V. Shoup, of Counsel.

Amici curiæ in behalf of City of Los Angeles: Max Thelen, Erwin P. Werner, Jesse E. Stephens, Milton Bryan.

For Respondents: Carl I. Wheat, Reginald L. Vaughan, Roderick B. Cassidy.

DECISION—Filed May 27, 1930

By the COURT:

This matter comes to us upon petitions for writs to review an order of the Railroad Commission of the State of California. Three separate petitions were filed, each carrier involved in the order objecting thereto. The cases have been consolidated in this court, as many of the matters urged in the attacks upon the order of the Commission are available to all the carriers affected by said order.

Said order of the Railroad Commission requires applicants to make and construct a union passenger station within that portion of the city of Los Angeles bounded by Commercial street, North Main Street, Redondo avenue, Alhambra avenue and the Los Angeles river, together with such tracks, connections and all other terminal facilities and additions, extensions, improvements and changes in the existing railroad facilities of applicants as may be rea-

sonably necessary and incidental to the use of said union passenger station, at a cost, as estimated or suggested in said order, of approximately $10,000,000 and in substantial compliance with the plans outlined by said Commission.

A similar order was made by the Railroad Commission in 1921, and a writ of certiorari to review this action of the Commission was obtained from this court, and in December, 1922, this court filed its decision annulling such order (A., [fol. 261] T. & S. F. Ry. Co. v. Railroad Commission, 190 Cal. 214).

The Supreme Court of the United States, on certiorari, reviewed the judgment of this court annulling said orders of the Railroad Commission and affirmed said judgment. (R. R. Comm. v. S. P. Co., 264 U. S. 331.) This case will hereinafter be referred to as the first Los Angeles Terminal case. In discussing the purposes and effect of the Transportation Act of 1920, the opinion of Mr. Chief Justice Taft, in said case, quotes from an earlier opinion written by him in another proceeding, as follows:

"The new act (Transportation Act of 1920) seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owner of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the (Interstate Commerce) Commission, which is to supervise their issue of securities, their car supply and distribution, their joint use of terminals, their joint use of new lines * * *."

After this quotation, the opinion of Mr. Justice Taft continues:

"On the one hand, it is urged that, with the purpose thus declared, the act commits to the supervision and control of the Interstate Commerce Commission such an undertaking as is here in question. * * * On the other hand, it is earnestly contended that, since no specific provision is made for the supervision of interstate union stations by the Interstate Commerce Commission, the whole subject remains in the control of the state railroad commission."

After a detailed consideration of several sections of the Interstate Commerce Act, as amended, Justice Taft continues:

"It is obvious from the foregoing that Congress intended [fol. 262] to place under the superintending and fostering direction of the Interstate Commerce Commission all increased facilities in the matter of distribution of cars and equipment and in joint terminals. * * * It (Interstate Commerce Act) gives to the Interstate Commerce Commission the power and duty, where the public interest requires, to make out of what is the passenger and freight station of one interstate carrier, a union station or depot.

"But it is insisted that the supervisory power thus conferred does not include the installation of an interstate union station, where its terminals and main tracks are newly built, and the interstate carriers are compelled to expropriate, not the terminal property of another interstate carrier, but property of others than carriers, not theretofore used for terminals. This would be giving power to the Interstate Commerce Commission to provide for a small and contracted union station of interstate carriers limited to the terminals of one carrier, and would leave the larger and more important union stations of interstate carriers to the control of state commissions. We think, however, that means of control over installation of such new union stations for interstate carriers is given to the Interstate Commerce Commission in amended paragraphs (19 to 21) of section 402. They provide that no interstate carrier shall undertake the extension of its line of railroad, or the construction of a new line of railroad * * * unless and until the Commission shall certify that public convenience, present and future, requires it; and that no carrier shall abandon all or any portion of its line, or the operation of it, without a similar certificate of approval. Such a certificate is, we think, necessary in the construction of a new interstate union station, which involves a substantial and expensive extension of the main tracks or lines of interstate carriers who theretofore have maintained separate terminals."

After a discussion of the authority of the state, in the [fol. 263] exercise of its police power to regulate intrastate business, it is said:

"But there is a great difference between such relocation of tracks or local stations and what is proposed here. The differences are more than that of mere degree; they and their consequences are so marked as to constitute a change in kind. They come within paragraphs 18 to 21 of section 402, and require a certificate of the Interstate Commerce Commission as a condition precedent to the validity of any action by the carriers or of any order by the state commission."

It is further held that under the Interstate Commerce Act, before the extension of main lines and terminals is required, the Commission is required to make a finding that the expense involved will not impair the ability of the carriers concerned to perform their duty to the public.

Pending the determination of this matter by the Supreme Court of the United States, the city of Los Angeles filed a petition with the Interstate Commerce Commission, asking for an order that the carriers provide, maintain and use a union station within a defined area of the city; abandon main line passenger and freight service, except local freight switching, on and along a portion of Alameda street in Los Angeles, and eliminate and abandon certain railroad grade crossings in the city; construct or acquire such structures, tracks and facilities and construct or abandon such lines or facilities of operation and arrange for such joint or other use of existing tracks, etc., as may be reasonably necessary and incidental as a part of and in furtherance of said union station. This matter was held under consideration by said Commission until the Supreme Court of the United States should have spoken upon the power and duty of said Commission. After the filing of said decision by said court, the Interstate Commerce Commission proceeded to act in accordance with its interpretation of said decision, and found, after hearings held:

[fol. 264] That public convenience and necessity permitted the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda street from College street to East Fifteenth street, inclusive, in the city of Los Angeles, California; that the extension by defendants of their respective main lines of steam rail-

road so as to reach and serve such union passenger station and terminal as they may construct and establish in a described portion of the city of Los Angeles, California, in accordance with a lawful order of the Railroad Commission of California, and the extension of such main lines to provide for rearrangement of their respective passenger and freight routes incidental to the convenient and proper operation of such union station and terminal is reasonably required in the interest of public convenience and necessity and the expense involved therein will not impair the ability of said carriers to perform their respective duties to the public; that in addition to the abandonment of train service on Alameda street as above authorized, public convenience and necessity permit the abandonment by defendants of such portions of their lines of steam railroad, or of all or any portion of the interstate service thereon, as may be incidental to the arrangement of routes, tracks and terminal facilities necessitated by the establishment of a union passenger station and terminal as indicated.

It is also found that the joint use by defendant steam railroads of such main-line tracks of each other as may be incidental and necessary or convenient to the proper operation of a union passenger depot and terminal as above indicated is in the public interest and practicable and will not substantially impair the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business.

The Railroad Commission of California then made the order under review here which was based upon its own [fol. 265] findings and the above findings of the interstate Commerce Commission and was made conditional upon the issuance by the Interstate Commerce Commission of proper and sufficient certificates covering and authorizing the constructions, extension and abandonments authorized in said order of the Railroad Commission. Such certificates were issued later by the Interstate Commerce Commission after a further hearing and the order of the Railroad Commission, to which the carriers are here objecting, became effective.

The lengthy controversy in the briefs of the parties hereto as to the effect and meaning of the decision of the United States Supreme Court in the first Los Angeles Terminal case has been settled, to some extent at least, by a later pro-

nouncement of that court in the same matter. During the pendency of this proceeding in this court to review said order of the Railroad Commission, the City of Los Angeles, on July 12, 1928, sought from the Supreme Court of the District of Columbia a writ of mandamus compelling the Interstate Commerce Commission to consider the evidence introduced in the proceeding before it involving the Los Angeles Passenger Terminal for the purpose of determining whether the Commission should order the railroads involved to build or use an interstate union passenger station in the city of Los Angeles, California, and after consideration of the evidence, to make such order therein as the facts may require. The Supreme Court of the District of Columbia dismissed the petition; the Court of Appeals reversed the judgment of the said Supreme Court and remanded the cause for further proceedings, and the United States Supreme Court granted a writ of certiorari, reversing the judgment of the Court of Appeals of the District of Columbia. (Interstate Commerce Commission v. United States ex rel. City of Los Angeles, 50 Sup. Ct. Rep. 53, decided November 25, 1929, and hereinafter referred to as the second Los Angeles Terminal case.) In that case it was said:

"The sole question for decision is whether the Interstate [fol. 266] Commerce Commission has jurisdiction to order the construction of the union station."

Further, in the same opinion, the court quotes from the decision of the Interstate Commerce Commission under review, as follows:

"Re-examination of the whole subject again leads us to the conclusion that under existing law we are not empowered to require the construction of a union passenger station of the character sought by the complaint."

The opinion of the United States Supreme Court continues:

"There are cases in the state courts in which by virtue of statutory provision, railroads are required expressly to unite in a passenger station, if determined by * * * a Railroad Commission. * * * But there is no Federal

case in which is built up out of such words as those which we find in the Transportation Act of 1920 authority for requiring such a station. Without more specific and express legislative direction than is found in the Act, we cannot reasonably ascribe to Congress a purpose to compel the interstate carriers here to build a union passenger station in a city of the size and extent and the great business requirements of Los Angeles. The Commission was created by Congress. If it was to be clothed with the power to require railroads to abandon their existing stations and terminal tracks in a city and to combine for the purpose of establishing in lieu thereof a new union station, at a new site, that power we should expect to find in congressional legislation. * * * To attribute to Congress an intention to authorize the compulsory establishment of union passenger stations the country over, without special mention of them as such, would be most extraordinary. * * * When the interest of a great city in its improvements is to be promoted entirely at the expense of railroads that enter it, Congress would be expected to hesitate before it would change discretionary leave for the erection of such stations into positive command. In such a case, the expenditure of a large amount of capital will not bring with it corresponding increase in the railroad revenues. If Congress had intended to give an executive tribunal unfettered [fol. 267] capacity for requisitioning investment of capital of the carriers and the purchase of large quantities of land and material in an adverse proceeding, we may well be confident that Congress would have made its meaning far clearer and more direct than in the present meagre provisions of the Transportation Act. * * * But it is said that we have already foreclosed the conclusion in this case by our opinion in 264 U. S. 331 (the first Los Angeles Terminal case.) The only issue there presented to this court was whether it was necessary to secure from the Interstate Commerce Commission its approval of the construction of a union station and the relocation of the connecting tracks proposed. The point in that case was the necessity for the acquiescence by the Interstate Commerce Commission in respect to a union passenger station. We held such a certificate to be necessary before a union station or connecting lines of interstate carriers could be lawful. That is all we held."

(1) It is settled, therefore, by the highest judicial authority in the land, that the Transportation Act has not transferred to the Interstate Commerce Commission the power to make the order involved here.

It is urged, however, by petitioners that even though it be true that the Interstate Commerce Commission has no power to enter the order for the erection and maintenance of a union station, the fact that it has some powers given it over the general subject matter indicates that Congress "has entered the field" of regulation respecting the establishment of union stations to such an extent as to automatically terminate the state's power to deal with that subject. The most decisive answer to this question is that the language of the decision of the Supreme Court of the United States, in the first Los Angeles Terminal case, is to the effect that an order is to be made by the state commission, conditioned only upon the proper findings and certificates of the Interstate Commerce Commission.

If we examine into the question independently of said [fol. 268] decision of the Supreme Court of the United States we find that the Supreme Court of California, prior to the Transportation Act of 1920, assumed, at least, that the Railroad Commission had jurisdiction to order the erection and maintenance of a union station, for in the case of Civic Center Assn. v. Railroad Commission, 175 Cal. 441, this court directed the Commission to proceed with a hearing and determination on the merits of a complaint which included a demand for a union station order. Later, in the case of Atchison, Topeka & Santa Fe Railway Co. v. R. R. Comm., supra, this court held that the Railroad Commission had been divested of such power by the Federal Transportation Act of 1920, and if this conclusion be out of harmony with the view of the United States Supreme Court, as the two decisions of that court with reference to this matter show it to be, then, assuredly, the power mentioned, never having been divested, is vested at present in the State Railroad Commission.

(2) The Constitution of this state expressly provides that the authority of the legislature to confer powers upon the Railroad Commission is plenary and unlimited by any provision of the Constitution (Const. of Cal., art. XII, secs. 22 and 23; Pac. Tel. and Tel. Co. v. Eshleman et al., 166 Cal. 640).

(3) There can be no question that the legislature by the Public Utilities Act (Stats. 1915, chap. 91, p. 115), sections 13b, 22a, 30, 31 and, particularly by section 36 thereof, has conferred upon the Railroad Commission powers broad enough to include the ones sought to be exercised by said Commission herein.

While it is beyond question that if the Congress of the United States had "occupied the field" of providing for the erection and maintenance of union passenger stations, the power of the state in that matter would have been supplanted and no coordinate power would exist in the State Commission, this situation does not exist under the decision of the United States Supreme Court to the effect that Congress has merely occupied the field of supervising [fol. 269] and ascertaining the jurisdictional facts with relation to the establishment of such stations. The case of State ex rel. Corporation Commission v. Southern R. R. Co. et al., 185 N. C. at page 457, in dealing with a similar contention, says:

"We have examined the act of 1920 carefully and we do not find any provision therein, which grants to the Interstate Commerce Commission, either expressly or by clear implication, the power, or which makes it its duty, to require the erection of passenger stations. It is not claimed in this case that such an order has been made by the Interstate Commerce Commission. The right of the State, then, to act in this particular is expressly preserved to it by the Transportation Act of 1920, section 402, subsection 17 (41 Stats. at Large, p. 477), as follows: 'Provided, however, that nothing in this act shall impair or affect the right of a state, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this act.'"

It is next contended that the order under review is in violation of law and in excess of jurisdiction because it violates the law of the case, as announced in the previous decision of this court, annulling a similar order of the Railroad Commission, and because the respondent is

estopped to make such order under the principle of res judicata. Addressing ourselves to the first contention, the case of Klauber v. San Diego Street Car Co., 98 Cal. 105, seems to contain pertinent language, as follows:

"The 'law of the case' is a phrase which has been formulated in this state to give expression to the rule that the final judgment of the highest court upon a question of law arising between the parties to an action on a given state of facts establishes the rights of the parties to that controversy, and is a final determination thereof, and, like a final judgment in any other case, estops the parties thereto from afterwards questioning its correctness."

(4) The doctrine of the "law of the case" applies only [fol. 270] to the decisions of the highest court on the particular issue under consideration. Where this issue involves the construction of the Constitution or statutes of the United States, the highest court is the Supreme Court of the United States, and, hence, the doctrine of the "law of the case" does not apply to a decision of the State Supreme Court. The question involved was discussed by the supreme court of Mississippi in the case of Louisville & N. R. Co. v. State, 107 Miss. 597, 65 So. 881, wherein it was said:

"Ordinarily, the opinions heretofore rendered would constitute the law of the case, and the matters therein decided would not be again examined by us; but the law of the case rule has no application here for the reason that the right claimed by appellant is one which arises under the Constitution and laws of the United States, and with reference to all such questions this court is not one of final jurisdiction, but is simply an intermediate appellate court from whose jurisdiction an appeal lies to the Supreme Court of the United States, the decisions of which court, in all such matters, are binding upon and must be followed by us."

(5) As we have stated, the decision of the United States Supreme Court in this matter was based upon other grounds than was the decision of the Supreme Court of California, and, as we have pointed out, it is our view that the final authority upon the question has held, in effect,

that the State Commission has jurisdiction to make the final order for a union station, upon the condition precedent that the Interstate Commerce Commission shall make the findings mentioned. This discussion also answers the argument that the State Commission is estopped by the doctrine of res judicata to make the order here under review.

(6) It is also contended that the order, requiring, as it does, the acquisition and dedication to public use of new property necessary for the construction of a union station and the abandonment of adequate facilities, deprives the [fol. 271] petitioners of their property without due process of law and takes their property for public use without compensation, contrary to the constitutional guarantees of the United States and of the state of California. That contention is not a new one, but has been passed upon by numerous state tribunals, contrary to the contention of the railroads herein, noticeably in the cases of State ex rel. Railroad Commissioners v. Atlantic Coast Line R. Co. et al., 67 Fla. 441; Griffin v. Southern Ry. Co., 150 N. C. 312; State ex rel. Corporation Commission v. Seaboard Air Line et al., 161 N. C. 270; State ex rel. Corporation Comm. v. Southern Ry. Co. et al., 185 N. C. 435; Gulf, S. F. Ry. Co. v. State, 167 S. W. 192; Railroad Commission v. Northern Alabama Ry. Co., 182 Ala. 357; Railroad Commission v. Alabama Great Southern R. R. Co., 185 Ala. 354; Mayor etc. v. N. & W. R. R. Co., 109 Mass. 103; State v. St. L. S. Ry. Co., 165 S. W. 491; W. M. & P. Co. v. Jacobson, 179 U. S. 287.

(7) The foregoing decisions also answer the contention of petitioners that the erection of a union station is a matter of business policy and management and not a proper subject for control under the police power of the state.

The Southern Pacific Company, one of the petitioners here, contends that with relation to it the order is void because its necessary force and effect, as to said petitioner, is to require it to abandon adequate facilities and to join the other petitioners in acquiring new property which is unnecessary for a full performance of said petitioner's duties to the public. This argument is made because there has been no finding of fact made by the Railroad Commission of

this state that the passenger station and facilities of the Southern Pacific Company was inadequate. There is, assuredly, an implied finding to this effect in the order of the Railroad Commission under review. The argument of the Southern Pacific Company that the evidence does not show that its passenger depot is inadequate, but, on the contrary, shows it to be adequate for some years to come, loses sight of the fact that an adequate building alone will not consti- [fol. 272] tute adequate passenger terminal facilities, but that a satisfactory passenger terminal contemplates also that passenger trains may safely be directed to said terminal. The record discloses that passenger trains of the Southern Pacific Company can only reach its present passenger terminal by grade crossings along Alameda street, which are so unsafe, impracticable and unreasonable, under all the surrounding circumstances, as to require elimination. The carriers admit the desirability of eliminating the grade crossings, and submitted a plan of their own. Both Commissions have found this plan undesirable and the application of the carrier to proceed in accordance therewith was denied by the Interstate Commerce Commission. Petitioners assert that they do not object to the elimination of grade crossings, but object to the method employed for accomplishing this. Extensive hearings were had upon this general problem and expensive investigations were made by engineers and other experts and the findings of the Railroad Commission were made after full consideration and upon ample evidence.

(8) Unless the action of the state Commission is beyond its jurisdiction, its findings are binding upon us in this proceeding. (Pac. Tel. & Tel. Co. v. Eshleman, 166 Cal. 640.)

(9) It is contended by the petitioners, Atchison, Topeka and Santa Fe Railway Co. and Los Angeles and Salt Lake Railroad Co., that their property is being taken for public use without compensation and without due process of law because the necessary effect of the order under review is to require them to join in the construction of a union station, the primary purpose of which is to accomplish the removal of the tracks of the Southern Pacific Company from Alameda street, a matter with which they are unconcerned.

The Railroad Commission, on the other hand, takes a position which we think is correct, to the effect that each company is ordered to join in the erection of the union station because of its own inadequacies in terminal passenger facilities; that the proportionate expense of each has not [fol. 273] yet been determined, and that when it is determined, it is assumed that each carrier will be required to pay because of and in an amount proportionate to the evils in its system sought to be remedied by the new plan. It cannot be assumed that in the event they fail to agree upon a segregation of the costs, the Railroad Commission will require any of the carriers to pay more than the amount necessary to furnish proper facilities to perform its duty to the public.

(10) It is also contended, and we think with little merit, that the order of the Railroad Commission is arbitrary because not warranted by the evidence introduced at the hearings. The evidence, indeed, the admitted facts, show that the station facilities of two of the carriers are inadequate, and that the grade crossings of the Southern Pacific, the third carrier, are dangerous to life and limb and unsuited to the surroundings. The latter matter could only be changed by a complete and expensive change of trackage or a change of terminal and the Commission adopted the latter method because of the need of a new terminal by the other two carriers. There is nothing unreasonable or arbitrary in the findings and order made.

(11) As a last attack upon the order, the carriers contend it is conditional and not absolute, indefinite and uncertain. It is contended that because the order recites that it shall become effective upon the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates or orders covering and authorizing the constructions, extensions and abandonments authorized in said order of the Railroad Commission, and that the issuance of such order or orders by the Interstate Commerce Commission shall be a condition precedent to the effectiveness of the order of the Railroad Commission, the order is void for uncertainty. Petitioners ask who is to say whether or not such certificates as might be made by the Interstate Commerce Commission

are "proper and sufficient certificates". We think this [fol. 274] question is not properly raised here. The certificates on their face are proper and sufficient and comply with the decision of the Supreme Court of the United States; the Railroad Commission is so considering them, as did the Interstate Commerce Commission. No question has been raised by anyone as to their insufficiency and since they had been issued and were in existence and became a part of the order of the Railroad Commission at the time the writ of review was issued by this court, no uncertainty existed at such time as to their content and no dispute existed as to their sufficiency.

(12) As to the objection that the order under review does not specify the details of the construction of the union station, we think it is without merit. A substantial compliance with the plans is all that is required, variation in detail being left to the discretion of the carriers. A similar situation was considered by the court in G., C. & S. F. Ry. Co. v. State, 167 S. W. 192, where the court said:

"It is urged by demurrer that the order was too vague and indefinite to be complied with, in that it did not designate the location of such depot, and failed to state the kind and character of building or structure required. We think it is unquestionably true that the Commission, under this statute, had the right to determine for itself the location, as well as the character and kind of a depot that should be erected; but it was permissible, we think, for it to leave these matters of detail open to appellants, for the reason that these questions might be best determined by them."

In the instant case, the location of the union station is given, the track lay-out is fully shown, the land necessary to be taken is definitely marked out and the general dimensions of the station building are given. As to the details of the arrangement, this is left, considerately, to the discretion of the carriers and, as we have stated, a substantial compliance with the suggested plan is all that is required.

We find no other contentions with sufficient merit to require discussion. The order of the Railroad Commission is affirmed.

[fols. 275-305] Petition for rehearing, covering 31 pages, filed June 16, 1930, omitted from this print. It was denied, and nothing more by orders of June 26, 1930.

[fol. 306] IN SUPREME COURT OF CALIFORNIA

In Bank

ORDERS DENYING REHEARING—Filed June 26, 1930

S. F. 13056

ATCHISON, TOPEKA AND SANTA FE

v.

RAILROAD COMMISSION, etc.

By the COURT:

The petition for a rehearing herein is denied.

Waste, C. J.

Dated June 26, 1930.

S. F. 13058

S. P. Co.

v.

RAILROAD COMMISSION

By the COURT:

The petition for a rehearing herein is denied.

Waste, C. J.

Dated June 26, 1930.

S. F. 13057

L. A. & S. L. RY. Co.

v.

RAILROAD COMMISSION

By the COURT:

The petition for a rehearing herein is denied.

Waste, C. J.

Dated June 26, 1930.

[File endorsement omitted.]

[fol. 307] IN SUPREME COURT OF CALIFORNIA

Bank

San Francisco, No. 13056

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (a Corp.), Petitioner,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, Respondents

On Review from the Railroad Commission of the State of California

JUDGMENT

The above-entitled matter having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It is ordered, adjudged, and decreed by the Court that the Order of the Railroad Commission of the State of California in the above-entitled cause be, and the same is hereby, affirmed.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 27th day of May, 1930, and now remaining of record in my office.

Witness my hand and seal of the court, affixed at my office, this 27th day of June, A. D., 1930.

B. Grant Taylor, Clerk, by I. M. Johnson, Deputy.

[fol. 308] IN SUPREME COURT OF CALIFORNIA

Bank

San Francisco, No. 13057

LOS ANGELES & SALT LAKE RAILROAD COMPANY (a Corp.), Petitioner,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, Respondents

On Review from the Railroad Commission of the State of California

JUDGMENT

The above entitled matter having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It is ordered, adjudged and decreed by the Court that the Order of the Railroad Commission of the State of California in the above entitled cause be, and the same is hereby, affirmed.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 27th day of May, 1930, and now remaining of record in my office.

Witness my hand and the seal of the Court, affixed at my office this 27th day of June, A. D., 1930.

B. Grant Taylor, Clerk, by I. M. Johnson, Deputy.

[fol. 309] IN SUPREME COURT OF CALIFORNIA

Bank

San Francisco, No. 13058

SOUTHERN PACIFIC COMPANY (a Corp.), SOUTHERN PACIFIC Railroad Company (a *a* Corp.), Petitioners,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, Respondents

On Review from the Railroad Commission of the State of California

JUDGMENT

The above entitled matter having been heretofore fully argued, and submitted and taken under advisement, and all and singular the law and premises having been fully considered,

It is ordered, adjudged and decreed by the Court that the Order of the Railroad Commission of the State of California in the above entitled cause be, and the same is hereby, affirmed.

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the foregoing is a true copy of an original judgment entered in the above entitled cause on the 27th day of May, 1930, and now remaining of record in my office.

Witness my hand and the seal of the Court, affixed at my office this 27th day of June, A. D., 1930.

B. Grant Taylor, Clerk, by I. M. Johnson, Deputy.

[fol. 310] IN SUPREME COURT OF CALIFORNIA

S. F. No. 13056

[Title omitted]

PETITION FOR APPEAL—Filed June 26, 1930

To the Honorable W. H. Waste, Chief Justice of the Supreme Court of the State of California:

Now comes Atchison, Topeka and Santa Fe Railway Company, petitioner in the above entitled cause, by its attorneys, and respectfully shows that:

On the 27th day of May, 1930, in the above entitled cause the Supreme Court of the State of California, the highest court of said state in which a decision in said cause could be had, rendered a certain judgment against the petitioner and in favor of the respondents affirming that certain order of the Railroad Commission of the State of California rendered on the 8th day of July, 1927, designated as Decision No. 18593, and said judgment of said court upon denial of petitioner's application for rehearing became operative and final on the 26 day of June, 1930.

[fol. 311] In the record and proceedings and in the rendition of said judgment and in permitting the same to become final and conclusive, manifest error has occurred greatly to petitioner's damage, whereby petitioner feels aggri-ved and does hereby appeal from said judgment to the Supreme Court of the United States.

In the record and proceedings and in the rendition of said judgment it is manifest that there was drawn in question by petitioner the construction and validity of said order of the Railroad Commission of the State of California rendered on the 8th day of July, 1927, designated as Decision No 18593, made and entered by the Railroad Commission of the State of California under Sections 22 and 23 of Article XII of the Constitution of the State of California, and under that certain Act of the Legislature of the State of California known and designated as the "Public Utilities Act," Statutes 1915, Chapter 91, page 115 (Sections 13 (b), 22 (a), 30, 31 and particularly Section 36 thereof), on the ground of said order being in contravention of, and repugnant to, the Constitution of the United States, and the judgment of said court was in favor of the validity of said order under said provisions of the laws of said state; and there was drawn in question the construction and application of three several clauses of the Constitution of the United States; that is to say, the clause of Section 1 of the Fourteenth Amendment to the Constitution of the United State, by which the State of California is prohibited from taking private property for public use without due process of law and without com-
[fol. 312] pensation, and from depriving petitioner of its property without due process of law and without compensation; and the clause of said Section 1 of said Fourteenth

Amendment by which the State of California is prohibited from denying any person within its jurisdiction the equal protection of the laws; and the clause of Section 8 of Article 1 of the Constitution of the United States by which Congress is empowered to regulate commerce among the several states; and the decision and judgment was against the rights, titles, privileges and exemptions specially set up and claimed under each of said clauses of the Constitution of the United States; and in said record and proceedings and in the rendition of said judgment it is manifest that there was drawn in question by petitioner the construction and validity of said order of said Commission so rendered, made and entered under said sections of the Constitution and laws of said state, on the ground that said order was in contravention of and repugnant to statutes and laws of the United States, being paragraphs eighteen to twenty-one of Section 1 and paragraphs three and four of Section 3 of the Interstate Commerce Act as amended by Transportation Act 1920, and said judgment was in favor of the validity of said order under said provisions of the laws of said state and against the rights so specially set up and claimed under said statutes and laws of the United States and under each and every of them; all of which is fully apparent in the record and proceedings of the case and in the rendition of said judgment, and specifically set forth in the assignment of errors filed herewith.

Wherefore petitioner prays that an appeal from said [fol. 313] judgment to the Supreme Court of the United States be allowed; that citation be issued as provided by law; that a transcript of the record, proceedings and papers upon which said judgment and order were based, duly authenticated, be ordered sent to the Supreme Court of the United States at Washington, D. C., under the rules of said court in such case made and provided; that the proper order be made and entered fixing the amount of security to be required of petitioner, conditioned according to law, and that upon giving such bond as may be required, and upon the compliance with the terms of the Statute in such cases made and provided, said bond and appeal may operate as a supersedeas until the determina-

tion of petitioner's appeal by the Supreme Court of the United States.

Dated June 26, 1930.

E. W. Camp, Robert Brennan, Attorneys for Petitioner. E. E. McInnis, of Counsel.

[File endorsement omitted.]

[fols. 314-319] "Petitions for appeal, S. F. No. 13057 and S. F. No. 13058; omitted in printing because they are substantially the same as in S. F. No. 13056."

[fol. 320] IN SUPREME COURT OF CALIFORNIA

S. F. No. 13056

[Title omitted]

ASSIGNMENT OF ERRORS—Filed June 26, 1930

Now comes petitioner above named and in connection with its petition for appeal filed herewith says that in the record and proceedings in the above entitled cause and the final judgment made and entered against it therein on the 27th day of May, 1930, and in the order dated June 26, 1930, denying petitioner's application for a rehearing in said cause manifest error has intervened to the prejudice of petitioner in the particulars hereinafter set forth, that is to say:

I

The Supreme Court of the State of California erred in holding that the order of the Railroad Commission of the State of California requiring petitioner to join with other carriers in the construction of such tracks, connections, and all other terminal facilities and additions, extensions, improvements and changes in the existing railroad facilities [fol. 321] of petitioner as may be reasonably necessary, convenient or incidental to the use of a union passenger station at the City of Los Angeles, State of California, is

not a taking of petitioner's property without due process of law and is not a denying to your petitioner the equal protection of the law within the meaning of the Fourteenth Amendment to the Constitution of the United States.

II

The Court erred in holding that the Railroad Commission's order requiring petitioner to extend its main line to reach territory not heretofore served by petitioner, permit other carriers to make use of its main line tracks, join with other carriers in constructing tracks for joint use of petitioner and other carriers, and to make connections between its main line tracks and the main line tracks of other carriers, is not a taking of petitioner's property without due process of law and is not a denying to your petitioner the equal protection of the law within the meaning of the Fourteenth Amendment to the Constitution of the United States.

III

The Court erred in holding that the order of the Commission requiring petitioner to abandon the use of its existing passenger station and station grounds in the City of Los Angeles, California, and join other carriers in constructing, maintaining and operating a union passenger station at the Plaza site in said City, is not a taking of petitioner's property without due process of law and a denying [fol. 322] to your petitioner the equal protection of the law within the meaning of the Fourteenth Amendment to the Constitution of the United States.

IV

The Court erred in holding that the order made and entered by the said Railroad Commission requiring, as it does, the acquisition and dedication to public use of new property necessary for the construction of the union station and the abandonment of adequate facilities does not deprive petitioner of its property without due process of law and does not take its property for public use without compensation in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States.

V

The Court erred in making and entering its judgment confirming the order of the Railroad Commission of the State of California in that said order is beyond the power which the said Commission can constitutionally exercise because said decision and order would deprive petitioner of its property without due process of law and would deny to it the protection of the law and is in contravention of and repugnant to the Fourteenth Amendment to the Constitution of the United States in that said order required petitioner to install large and expensive additions and betterments and requires petitioner to procure large sums of new capital to comply with said order; and requires petitioner to extend its main lines of railroad and acquire large [fol. 323] areas of property and dedicate the same to public use without compensation.

VI

The Court erred in holding that the order of the Railroad Commission commanding petitioner to extend its main line tracks, permit joint use of its main line tracks by other carriers, and connect its main line tracks with those of other carriers, and join other carriers in constructing main line tracks for joint use of petitioner and other carriers, is not such a regulation of interstate commerce as conflicts with the power of Congress to regulate such commerce under Section 8 of Article I of the Constitution of the United States.

VII

The Court erred in holding and deciding that the Railroad Commission of the State of California is vested by the Public Utilities Act (Statutes 1915, Chapter 91, page 115) Sections 13 (b), 22 (a), 30, 31 and 36 with powers broad enough to include those sought to be exercised by said Commission in entering its order herein and the Court erred in entering the judgment affirming the order of the Railroad Commission because the order of said Commission requiring petitioner to join with other carriers in constructing such tracks, connections and all other terminal facilities, additions, extensions, improvements and changes

in the existing railroad facilities of petitioner as may be reasonably necessary and incidental to the use of a union passenger station at the City of Los Angeles, State of Cali- [fol. 324] fornia, is beyond the power of said Commission in that the Congress of the United States has vested in the Interstate Commerce Commission, by the provisions of paragraphs 18-21 of Section 1 of the Interstate Commerce Act and paragraphs 3 and 4 of Section 3 of said Act, certain powers respecting said matters which powers are exclusive.

VIII

The Court erred in holding that the order of the Commission requiring petitioner to extend its main line tracks, permit other carriers joint use of its main line tracks, connect its main line tracks with those of other carriers, and join with other carriers in constructing main line tracks for joint use of petitioner and other carriers is not in conflict with powers conferred by the Congress upon the Interstate Commerce Commission by the Interstate Commerce Act, especially paragraphs 18, 19, 20, and 21 of Section 1 thereof, as amended by Transportation Act 1920.

IX

The Court erred in holding that the Commission's order requiring petitioner and other interstate carriers by rail to establish, maintain and operate a union passenger station in the City of Los Angeles is not in conflict with the Interstate Commerce Act as amended by Transportation Act 1920 and particularly with paragraph 4 of Section 3 of the Act as so amended, in that by said paragraph the Congress [fol. 325] has conferred on its Commission certain power with respect to union or joint stations, and any power in the Railroad Commission of California to make the order affirmed by the Court would be inconsistent and in conflict with such powers so conferred upon the Interstate Commerce Commission by the Congress; and that by the enactment of said paragraph the Congress has fixed the extent and limit of regulation of interstate carriers by rail with respect to the establishment of union stations.

X

The Court erred in holding that said order in requiring your petitioner to permit use of its main line tracks by

other interstate carriers is not in conflict with said paragraph 4 of Section 3 of said Interstate Commerce Act as so amended, in that by said paragraph the Congress has given said Interstate Commerce Commission power to order joint use of tracks, which power is exclusive of any similar power in state authorities.

XI

The Court erred in holding that said Commission's order requiring petitioner and other interstate carriers to establish, maintain and operate a union passenger station in the City of Los Angeles is not in conflict with the Interstate Commerce Act as amended by Transportation Act 1920, and particularly with paragraph 3 of Section 3 of said Act as so amended, in that by said paragraph the Congress has conferred on its Commission certain power with respect to interchange of traffic between lines of railway and the forwarding, receiving and delivering of passengers [fol. 326] and freight to and from lines of railway, and any power in the Railroad Commission of California to make the order affirmed by the Court would be inconsistent and in conflict with such powers so conferred upon the Interstate Commerce Commission by the Congress; and in that by said paragraph the Congress has fixed the extent and limit to which interstate carriers by rail may be regulated with respect to interchange of traffic and the receiving, forwarding and delivering of passengers and freight.

XII

The Court erred in holding that said order in requiring your petitioner to connect its main line tracks with the main line tracks of other interstate carriers is not in conflict with said Acts of Congress and especially of said paragraph 3 of Section 3 in that the Congress in and by said paragraph has conferred on the Interstate Commerce Commission power to order such connections, and any power in the Railroad Commission of California to make the order affirmed by the Court would be inconsistent and in conflict with such powers so conferred upon the Interstate Commerce Commission by the Congress.

XIII

The Court erred in holding that said order requiring petitioner to extend its main line of railroad is not in conflict with paragraphs 18 to 21 of Section 1 of said Interstate Commerce Act as amended by Transportation Act 1920; in that, in and by said paragraphs the Congress has conferred upon its commission such power as the Congress deems fit to be exercised with respect to extension of main [fol. 327] lines of railway used in interstate commerce; and any order by a state commission commanding an interstate carrier by rail to extend its main line is an invasion of a field of interstate commerce occupied by the Congress.

XIV

The Court erred in holding that the Railroad Commission of the State of California is vested with power and authority to order the construction of main line tracks, joint use of tracks, main line track connections, or other railroad facilities in accordance with certificates of public convenience and necessity issued by the Interstate Commerce Commission under the provisions of the Transportation Act 1920.

XV

The Court erred in holding that the certificates purported to be issued by the Interstate Commerce Commission are proper and sufficient, and in holding that no question has been raised as to their insufficiency; because it appears from said certificates that they were issued by said Interstate Commerce Commission in adversary proceedings against petitioner and other carriers and were not issued on carriers' motion or application but over their protest and objection.

XVI

The Court erred in making and entering its judgment affirming the order of the Railroad Commission of the State of California because the order of said Commission is based upon an error of law and is beyond the power of [fol. 328] the Railroad Commission of the State of California in that the order made and entered by said Commission requiring petitioner to construct such tracks, connec-

tions and all other terminal facilities, additions, extensions, improvements and changes in the existing railroad facilities of petitioner as may be reasonable and necessary and incidental to the use of a union passenger station at the City of Los Angeles, State of California, is an attempt by the Railroad Commission of California to enforce compliance by petitioner with certificates of public convenience purported to have been issued by the Interstate Commerce Commission for which certificates no application was made by petitioner, or any other carrier, and is an attempt by the Railroad Commission of the State of California to order the petitioner to do that which can be permitted only by the Interstate Commerce Commission upon an application made by carriers to the Interstate Commerce Commission.

XVII

The Court erred in holding that the order of the Commission became effective by the issuance by the Interstate Commerce Commission of certain certificates of public convenience and necessity, in that it appears upon the face of such certificates and from the files and papers before said Court that such certificates were issued in proceedings brought against petitioner and other carriers and not upon application of petitioner or any other carriers, but on application of said Railroad Commission and over the protest and objection of petitioner and all other carriers involved.

[fol. 329]

XVIII

The Court erred in making and entering its judgment affirming the order of the Railroad Commission of the State of California because the order made and entered by said Commission is beyond the power which said Commission can constitutionally exercise, deprives the petitioner of its property without due process of law and takes its property for public use without compensation in contravention of and repugnant to the Fourteenth Amendment to the Constitution of the United States in that the order requires petitioner to extend its main lines of railroad to reach other territory not heretofore served by petitioner and to acquire and dedicate to public use new property necessary therefor.

XIX

The Court erred in affirming said order because said order is contrary to the law of the case as declared by the Supreme Court of the United States in its rulings and judgment affirming this Honorable Court's judgment which annulled the former order of the Commission made in the same proceedings.

XX

The Court erred in holding that the order of the Commission requiring petitioner to abandon the use of its existing passenger station and station grounds in the City of Los Angeles, California, and join other carriers in constructing, maintaining and operating a union passenger station at the Plaza site in said City, for the purpose of [fol. 330] removing the trains of the Southern Pacific Company from Alameda Street in the said City, with which removal it has no concern, is not a taking of petitioner's property without due process of law and a denying to your petitioner the equal protection of the law within the meaning of the Fourteenth Amendment to the Constitution of the United States.

Wherefore petitioner above named prays that the said judgment entered herein on the 27th day of May, 1930, affirming the order of the Railroad Commission of the State of California be reversed with directions that the petition of your petitioner be granted and for such other and further relief as may be appropriate.

E. W. Camp, Robert Brennan, Attorneys for Petitioner. E. E. McInnis, of Counsel.

[File endorsement omitted.]

[fols. 331-338] In Supreme Court of California

S. F. No. 13057

[Title omitted]

Assignment of Errors—Filed June 26, 1930

"Assignment of Errors of Los Angeles & Salt Lake Railroad Company in S. F. No. 13057 omitted in printing,

except paragraph XX, for the reason that the same is substantially identical with the Assignment of Errors of Atchison, Topeka and Santa Fe Railway Company in S. F. No. 13056.

[fol. 339] XX

The Court erred in holding that the order of the Commission requiring petitioner to abandon the use of its existing passenger station and station grounds in the City of Los Angeles, California, and join other carriers in constructing, maintaining and operating a union passenger station at the Plaza site in said city, for the purpose of removing the trains of the Southern Pacific Company from Alameda Street in the said city, with which removal it has no concern, is not a taking of petitioner's propetry without due process of law and a denying to your petitioner the equal protection of the law within the meaning of the Fourteenth Amendment to the Constitution of the United States.

Wherefore petitioner above named prays that the said judgment entered herein on the 27th day of May, 1930, affirming the order of the Railroad Commission of the State of California be reversed with directions that the petition of your petitioner be granted and for such other and further relief as may be appropriate.

A. S. Halsted, E. E. Bennett, Attorneys for Petitioner.

[File endorsement omitted]

[fols. 340-346] In Supreme Court of California

S. F. No. 13058

[Title omitted]

Assignment of Errors—Filed June 26, 1930

Assignment of Errors of Southern Pacific Company et al. in S. F. No. 13058 omitted in printing, except paragraph No. XX thereof, for the reason that the same are substantially identical with the Assignment of Errors of Atchison, Topeka & Santa Fe Railway Company in S. F. No. 13056."

[fol. 347] XX

The Court erred in making and entering its judgment affirming the order of the Railroad Commission of the State of California requiring petitioners to abandon an adequate passenger station and facilities and join with other carriers in acquiring new property upon which to construct a union passenger station for the purpose of eliminating certain grade crossings in said City of Los Angeles and for the purpose of providing other carriers with adequate passenger terminal depots, in that said order deprives petitioners of their property without due process of law and takes their property for public use without compensation and is, therefore, in contravention [fol. 348] of and repugnant to the Fourteenth Amendment to the Constitution of the United States.

Wherefore petitioners above named pray that the said judgment entered herein on the 27th day of May, 1930, affirming the order of the Railroad Commission of the State of California be reversed with directions that the petition of petitioners be granted and for such other and further relief as may be appropriate.

Frank Karr, C. W. Durbrow, Attorneys for Petitioners Southern Pacific Company and Southern Pacific Railroad Company. G. V. Shoup, of Counsel.

[File endorsement omitted.]

[fol. 349] In Supreme Court of California

S. F. No. 13056

[Title omitted]

Order Allowing Appeal—Filed June 26, 1930

The petitioner in the above suit having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Supreme Court of the State of California, on the 27th day of May, 1930, and

from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and rules of the Supreme Court of the United States in such case made and provided,

It is now here ordered, that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of the State of California in the above entitled cause as provided by law, and it is further ordered that the Clerk of the Supreme Court of the State of California shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court [fol. 350] within sixty (60) days of this date.

And it is further ordered, that this order operate as a supersedeas and that the supersedeas bond be and the same is hereby fixed in the sum of Five Hundred Dollars ($500.00).

Dated June 26, 1930.

William H. Waste, Chief Justice of the Supreme Court of the State of California.

[File endorsement omitted.]

[fol. 351] IN SUPREME COURT OF CALIFORNIA

S. F. No. 13057

[Title omitted]

ORDER ALLOWING APPEAL—Filed June 26, 1930

The petitioner in the above suit having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Supreme Court of the State of California, on the 27th day of May, 1930, and from each and every part thereof, and having presented and filed its petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and the rules

of the Supreme Court of the United States in such case made and provided,

It is now here ordered, that an appeal be, and the same is hereby, allowed to the Supreme Court of the United States from the Supreme Court of the State of California in the above entitled cause as provided by law, and it is further ordered that the Clerk of the Supreme Court of the State of California shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within sixty (60) days of this date.

[fol. 352] And it is further ordered, that this order operate as a supersedeas and that the supersedeas bond be and the same is hereby fixed in the sum of Five Hundred Dollars ($500.00).

Dated June 26th, 1930.

William H. Waste, Chief Justice of the Supreme Court of the State of California.

[File endorsement omitted.]

[fol. 353] In Supreme Court of California

S. F. No. 13058

[Title omitted]

Order Allowing Appeal—Filed June 26, 1930

The petitioners in the above entitled suit, and each of them, having prayed for the allowance of an appeal in this cause to the Supreme Court of the United States from the judgment made and entered in the above entitled suit by the Supreme Court of the State of California, on the 27th day of May, 1930, and from each and every part hereof, and having presented and filed their petition for appeal, assignment of errors, and prayer for reversal, pursuant to the statutes and the rules of the Supreme Court of the United States in such case made and provided,

It is now here ordered, that an appeal be, and the same is hereby, allowed to the Supreme Court of the United

States from the Supreme Court of the State of California in the above entitled cause as provided by law, and it is further ordered that the Clerk of the Supreme Court of the State of California shall prepare and certify a transcript of the record, proceedings and judgment in this cause and transmit the same to the Supreme Court of the United States so that he shall have the same in said Court within sixty (60) days of this date.

And it is further ordered, that this order operate as a [fol. 354] supersedeas and that the supersedeas bond be and the same is hereby fixed in the sum of Five hundred Dollars ($500.00).

Dated June 26, 1930.

William H. Waste, Chief Justice of the Supreme Court of the State of California.

[File endorsement omitted.]

[fols. 355-357] Citations, in usual form, showing service on Arthur T. George et al., filed June 26, 1930, omitted in printing.

[fols. 358-369] Supersedeas bonds on appeal for $500.00, approved and filed June 26, 1930, omitted in printing.

[fol. 370] IN SUPREME COURT OF CALIFORNIA

S. F. No. 13,056, S. F. No. 13,057, S. F. No. 13,058

[Titles omitted]

[fol. 371] **Agreed Condensed Statement of Evidence**

BEFORE CALIFORNIA RAILROAD COMMISSION

STIPULATION

It is hereby stipulated and agreed by and between the respective parties to the above entitled causes that on ap-

peal of said causes to the Supreme Court of the United States the following "Agreed Condensed Statement of Evidence", together with the exhibits specified in said Agreed Condensed Statement of Evidence, including all exhibits embraced therein and all exhibits certified separately and transmitted to the Supreme Court of the United States, as specified in Joint Præcipe for transcript of record and Stipulation contains all of the evidence introduced in the above consolidated causes essential to the decision of the questions presented by said appeal and that when approved by the presiding Justice of the Supreme Court of the State of California said "Agreed Condensed Statement of Evidence" may be filed in the office of the Clerk of the Supreme Court of the State of California and become a part of the record for the purposes of the appeal in the above entitled causes.

Dated San Francisco, September 12th, 1930.

Robert Brennan, E. W. Camp, A. S. Halsted, Frank Karr, C. W. Durbrow, Attorneys for Petitioners.
Arthur T. George, Ira H. Rowell, Roderick B. Cassidy, Attorneys for Respondents.

[fol. 372] Statement by Presiding Commissioner Thelen

This is the time and place set for the hearing in seven proceedings: Case No. 970, Municipal League of the City of Los Angeles v. Southern Pacific Company, and others; Case 971, Central Development Association of Los Angeles v. Southern Pacific Company and others; Case 972, The Civic Center Association of Los Angeles v. Southern Pacific Company, and others; and four cases Numbered 974, 980, 981 and 983 brought by the Cities of Pasadena, Alhambra, San Gabriel and South Pasadena, respectively, against the Pacific Electric Railway Company and others (Tr. 3, Sept. 15, 1916).

Colloquy Between Commission and Counsel

The following colloquy between the Commission and counsel:

"Mr. Durbrow, Attorney for the Southern Pacific Co., I shall contend that, so far as the establishment of a union

depot is concerned, that this Commission has been vested with the sole and exclusive power to determine that question under the provisions of Section 36 of the Public Utilities Act, and if there is any power in any tribunal in the State of California, court, commission or municipal council, that power must be vested in this Commission under the laws as they now exist (Tr. 10).

"Commissioner Thelan: You would say that if there is power in any tribunal it is in the Railroad Commission. Are you prepared to say whether, in your opinion, that power has been vested in the Railroad Commission?

"Mr. Durbrow: To be frank, in my judgment, by the provisions of Section 36 that power has been vested in the Commission (Tr. 30).

"Commissioner Thelen: Mr. Halsted, you heard the questions I asked Mr. Durbrow at the end of his argument involving this situation of the union depot and these tracks in connection with the depot.

"Mr. Halsted, Attorney for Los Angeles and Salt Lake Railroad: I think I have answered them all.

"Commissioner Thelen: You agree entirely with Mr. Durbrow?

[fol. 373] "Mr. Halsted: Yes, sir (Tr. 48-49).

"Mr. Clotfelter for the Atchison Topeka & Santa Fe Railway Co.: With everything that Mr. Durbrow and Mr. Halsted has said, in behalf of the Santa Fe Railway Company, I wish to state that we concur. If there is any jurisdiction to determine these matters presented by these questions, in any body, we believe it is in the Railroad Commission. But whether that is final, whether that is so, must depend upon what is finally decided to be the law of the land at the present time (Tr. 52).

"Mr. Durbrow: My conception of the law is that that power has been conferred upon commissions, not only of this state, but of other states, and that it is held to be a delegation by the legislature of the police power of the state" (Tr. 78).

"Mr. Durbrow: "I want to say now, if I didn't say it; I tried to, that I believe that where a legislature of a state delegates the power to a commission to compel the establishment of a union depot, that the commission may exercise that power subject, of course, always to constitutional safeguards and it is presumed that the commission will

exercise its power in conformity with those'' (Tr. 97, Sept. 15, 1916).

Statement by Presiding Commissioner Thelen

In the hearing on the question of jurisdiction all the parties agreed that these seven proceedings might be consolidated for determination of that issue, and that was done. I assume it would be desirable to follow the same course now that we are approaching the issue of fact, namely, to have these seven proceedings consolidated for hearing and decision. If there is no objection to that procedure we will solve the matter along those lines (Tr. 132, July 24, 1917).

RICHARD SACHSE, was called as a witness on behalf of the Railroad Commission and having been duly sworn testified as follows:

I am the Chief Engineer of the Railroad Commission of [fol. 374] the State of California and was instructed by the Commission to make an investigation of the engineering and other features of the matters involved in these various cases and as a result of the investigation have prepared a printed report (Tr. 1478). The report deals with three main subjects, grade crossing elimination, freight facilities and a union passenger terminal (Tr. 1479). Generally speaking this, I believe, is correct: That the grade crossing elimination is the most important subject and the recommendations we make for that branch of the investigation are to quite a degree independent of the other subjects and that means that all the other matters more or less depend*en* on the grade crossing problem and on the resolution of it. The union passenger terminal in some respects is the least important of the three main subjects, that is, both from the point of view of importance to the city and also from the relative importance of these items that I have mentioned (Tr. 1480, Feb. 17, 1920).

There are only three feasible sites for a union passenger terminal that can be seriously considered, Southern Pacific site, Santa Fe site and Plaza site (Tr. 1481). I have stated in the report that the question of whether there should be

a union passenger terminal is not finally, strictly or even mainly an engineering question. It is question of general city planning policy from the standpoint of the city of Los Angeles. And probably those factors will finally control or ought to control (Tr. 1482). The question of whether there ought to be a union passenger terminal in Los Angeles regardless of location should be answered with a very decided "yes". We come to that conclusion for the reason that in Los Angeles the physical conditions are practically ideal and the railroad situation at this time is such that if ever a union depot is to be built, this is probably the time to build it. This is so because the existing facilities are inadequate, and a great deal of money has to be expended in the near future regardless of whether there is a union depot or not and regardless of where it is going to be [fol. 375] built (Tr. 1482-1483).

Thereupon there was offered and admitted in evidence California Railroad Commission Exhibit No. 1, entitled: "Railroad Commission Grade Crossing and Terminal Investigation Los Angeles", which exhibit is certified separately and transmitted as an original exhibit (Tr. 1498).

The grade crossing elimination is the most important. All main line traffic should be diverted from Alameda Street, which will result in 97 per cent of all traffic now on Alameda Street being removed (Tr. 1481).

All river grade crossings could be eliminated regardless of where the union station will be, if there is one at all (Tr. 1604). If cost is the controlling element or the sole element to be considered then no expensive passenger depot, whether union or otherwise, is justified from the standpoint of the railroads (Tr. 1621). If I were approaching the question of a terminal station from the standpoint of income to be produced by expenditure, and if I had that alone in mind, I would not build such a depot (Tr. 1624-1625). My conclusion—I might say, our conclusion, and when I say "our conclusion," I mean the conclusion of the engineers—is that the Plaza site is so greatly superior to the others, that the margin is so great that there is a distinct preference for the Plaza location, and that if a union terminal is built at all it should be built there (Tr. 1483-1484). My main reason for believing there should be a union depot in Los Angeles is that the con-

ditions in Los Angeles seem to me naturally established. They are made by nature and by the general development of the city, and I, in my limited experience, know of no other place where the natural development is in the direction of a union passenger depot at a comparatively insignificant cost to a greater extent than in Los Angeles; and that is my main reason for thinking and recommending that in Los Angeles a union depot was the proper thing. That would not be true, necessarily, of any other city [fol. 376]where the natural conditions were not present, regardless of civic pride and all of that (Tr. 1633-1634). Considered from the viewpoint of the residents of Los Angeles it is my opinion that there should be a union passenger terminal as distinguished from different terminals of different roads because there are now three steam road passenger depots, two of them are inadequate even for the service that they alone handle and I believe that it is generally admitted that radical changes in each one of these considered alone are imperative and will have to come (Tr. 1634). And it seems to me that every citizen is interested to have the best possible facilities whether he uses them all the time or occasionally (Tr. 1635). I would like to say that I did not say in my report and I am not by any means of the opinion, never was and never will be, that this thing is desirable if the city bears the cost. I did not say that and I do not think it can be found anywhere in the report (Tr. 1638).

Commissioner Edgerton: The Commission has come to this conclusion, and it may clear up some misunderstanding: We announce at this time that no plan for the union terminal passenger station will be seriously considered by the Commission which would involve contribution, direct money contribution, by the city, unless such contribution were voluntarily offered by the city (Tr. 1655). Based upon an actual count of September 1918 the number of passengers arriving and departing on all steam roads for a year amounted to 2,807,580 and 77,745 of these passengers transferred from one station to another, showing that the percentage of passengers who transferred to the total number of passengers who did not transfer is 2.93 per cent

(Tr. 1680-1682). That figure of 2.93 per cent leaves out one important consideration, which is the Pacific Electric passengers that may come into Los Angeles. The Pacific Electric passengers are a very large majority as compared with the steam railroad passengers (Tr. 1682).

I believe that the operating expenses under separate [fol. 377] facilities are going to be progressively greater in the future than would be the case under unified operations (Tr. 1699, August 16, 1920).

T. H. Williams was called as a witness on behalf of defendants and, having been duly sworn, testified as follows:

I am Assistant General Manager of the Southern Pacific Company, Southern District. The present time table of the Southern Pacific Company and the Los Angeles and Salt Lake roads show that there are 59 trains in and out of Los Angeles every 24 hours. We could easily handle one hundred trains with the present layout and if we had twelve tracks in our depot we could handle one hundred twenty five to two hundred trains per day without any trouble. I believe it will be a fond dream to think of handling two hundred trains per day in the next twenty or thirty years. In my judgment these two lines will not handle more than one hundred and eighteen trains per day at the expiration of twenty or thirty years (Tr. 2010). I agree with the finding made by the California Railroad Commission in 1914 in approving the plan of the present Southern Pacific terminal facilities at Los Angeles that "the structure to be erected under these plans will be efficient and ample to provide for the probable passenger traffic coming to and departing from a city several times the present size of Los Angeles" (Tr. 2011).

W. H. Comstock was called as a witness on behalf of defendants and, having been duly sworn, testified as follows:

I am the General Manager of the Los Angeles and Salt Lake Railroad; have had 25 years' experience in the opera-

tion of railroads. Familiar with the operation of passenger trains in and out of stations and time required for loading such trains and discharging passengers and baggage. It is my opinion that the train service on the Los Angeles and Salt Lake Railroad at Los Angeles will decrease rather than increase during the next few years. In my opinion the Southern Pacific Station can handle 200 trains a day, but in my judgment 200 trains could not be [fol. 378] brought into this city over the three steam lines without doubling, trebling and four tracking the lines (Tr. 2039).

PAUL SHOUP was called as a witness on behalf of defendants and, having been duly sworn, testified as follows:

I am Vice President of Southern Pacific Company and President of Pacific Electric Railway Company (Tr. 1180).

As to the practicability and necessity as applied to these two sites, the statement in the engineer's report on page 289 is to the effect that the Southern Pacific site is adequate for 20 years as it will, in the view of the engineers of the Commission, accommodate 140 trains, which is the number estimated at the end of 20 years. Again on page 344 of the engineering report it is stated that the station is large enough for some time to come and on page 337 that it is sufficient for 140 trains in the future, the reference to the 140 trains being based on the 20-year estimate.

I believe that it has been conclusively shown that the site is adequate to handle expeditiously a much larger number of trains than 140 (Tr. 2061).

On November 30, 1925, the Commission, sitting en banc called the above cases, Nos. 970, 971, 972, 974, 980, 981, 983 and Application No. 3346, and announced that they were reopened for further hearing, and also called Case No. 2177, Complaint of W. H. Daum v. Los Angeles and Salt Lake Railway, et al., in the matter of grade crossings and the establishment of union passenger terminal (Tr. 2535). It was announced that said cases were reopened for further hearing in conformity with the order of the United States Supreme Court and the Interstate Commerce Commission (Tr. 2535). Whereupon the carriers made a formal motion to dismiss from consideration all of the cases

set for hearing with the exception of the Daum case upon the ground that the Supreme Court of the State of California had entered its judgment annulling the orders theretofore made by the Commission and that this judgment had been affirmed by the Supreme Court of the United [fol. 379] States (Tr. 2545). Thereafter the Commission announced that the objection to the jurisdiction of the Commission was overruled (Tr. 2560).

Thereupon counsel for the City of Los Angeles offered and there was admitted in evidence City of Los Angeles Exhibit 5, being a certified copy of Decision of the Interstate Commerce Commission, Docket 14778 and Finance Docket 3556, decided July 6, 1925, which exhibit is certified separately and transmitted as an original exhibit (Tr. 2580, November 30, 1925).

GEORGE S. HILL was called as a witness on behalf of the Commission and, having been duly sworn, testified as follows:

I am a civil engineer and occupied the position of Assistant Engineer of the California Railroad Commission (Tr. 2593) and have engaged in my profession since 1901. During the period of my experience I have made studies of railroad terminal plans and am familiar in general with the principles which are involved in the planning of railroad terminals. I prepared a plan for a union passenger terminal in the Plaza area for the Railroad Commission in 1924 in connection with Interstate Commerce Commission Docket 14778 and have since made further studies of the Plaza plan which I believe is practical (Tr. 2595).

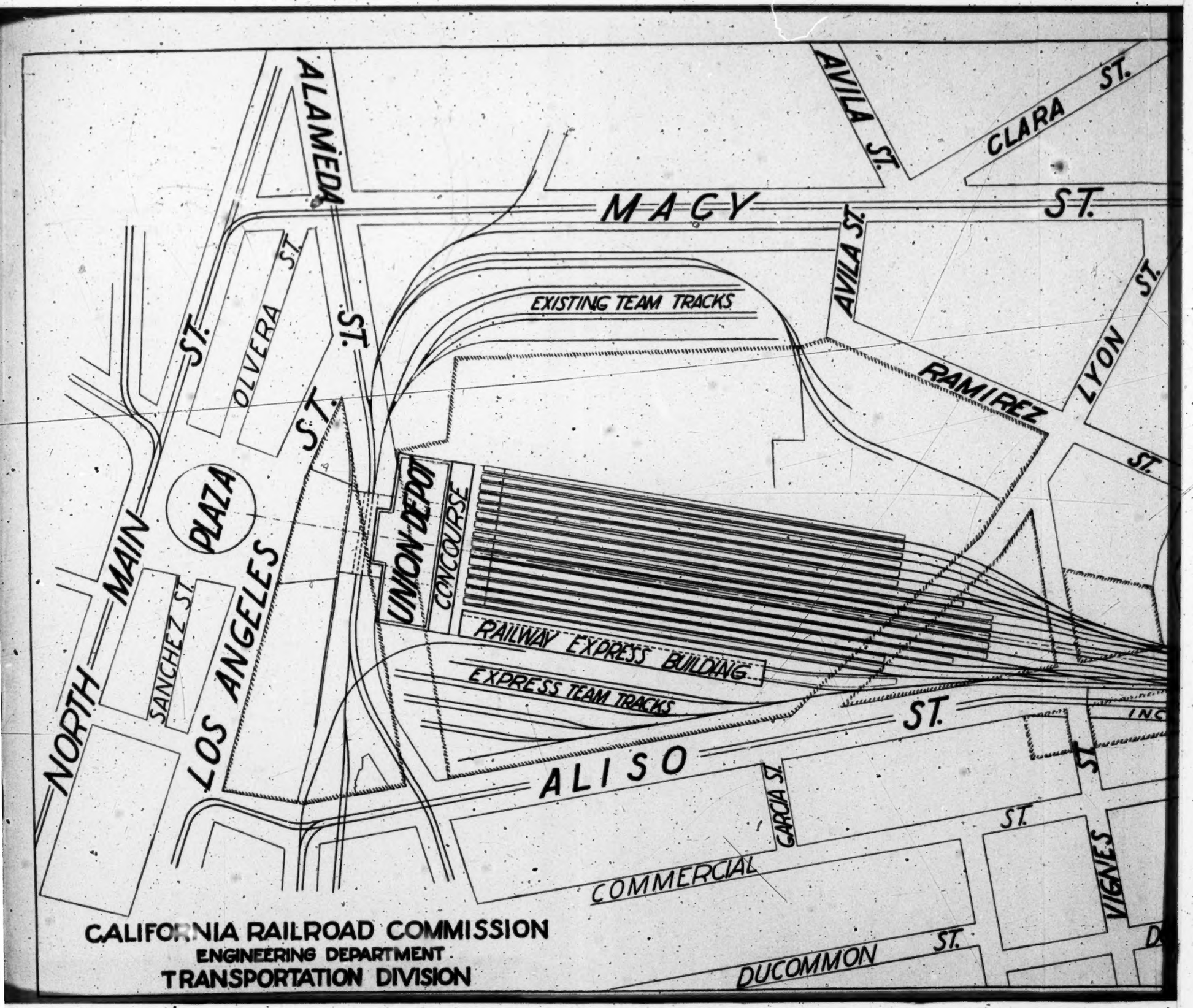
The Plaza plan, Exhibit 23 before the Interstate Commerce Commission, was prepared by me mainly as a sample to show that a practical Union Station could be built within the area defined by the Railroad Commission's order for less money than would be required for separate stations at other sites. Two comparative tables of cost were prepared —one to show the new money required and the other to show the total value of property devoted to passenger terminal use. Under the Plaza plan, the Union Station extends from the river at Aliso Street to Alameda Street facing the

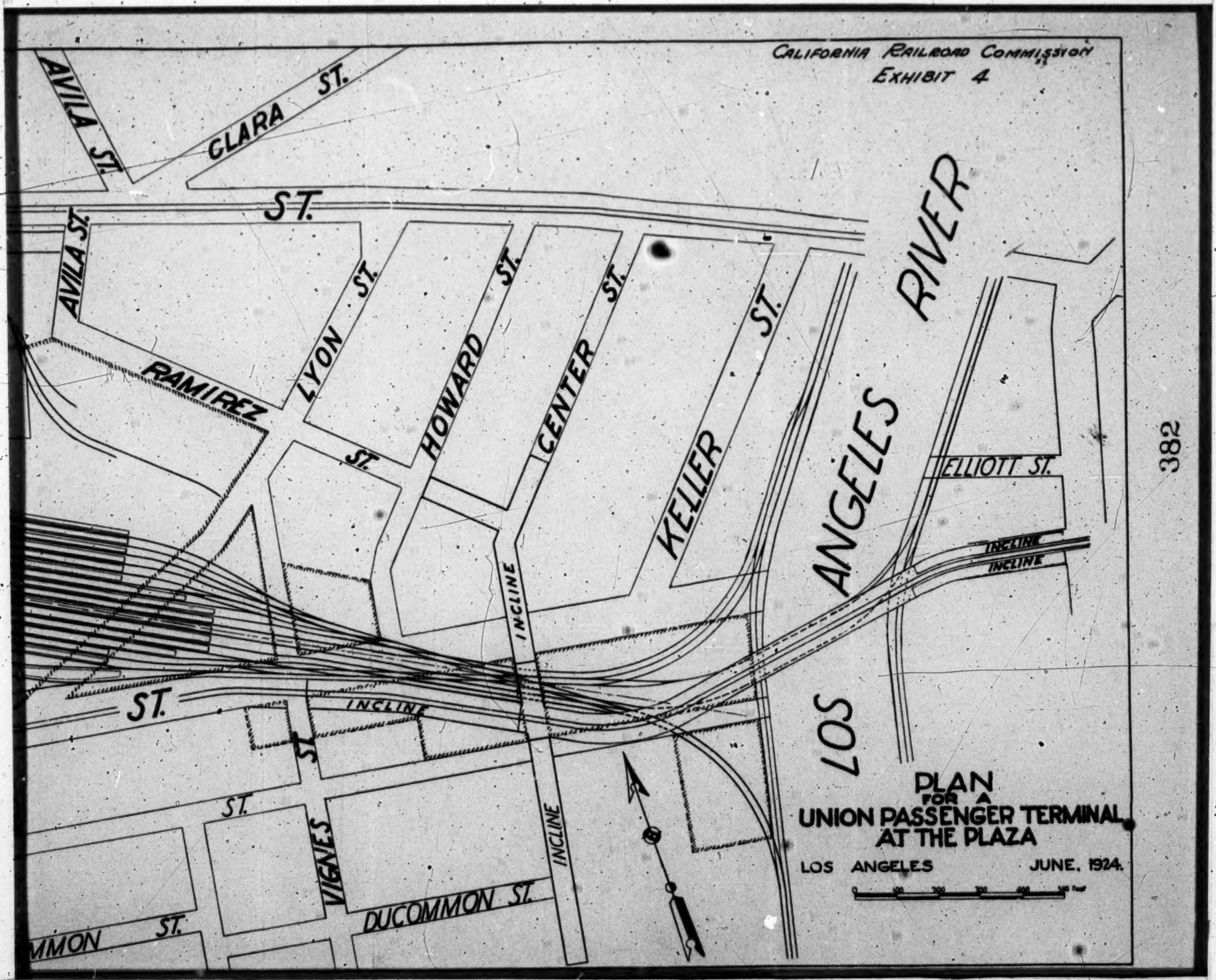
Plaza. The land to be taken includes all of that shown within the crosshatched area and extends from Los Angeles Street to Vignes Street and from Aliso Street to Ramirez [fol. 380] Street and the existing team yard property of the Southern Pacific Company, together with a parcel between Howard and Lyon Streets and other parcels south of Aliso Street as indicated. Alameda Street is shown slightly deflected in order to pass in front of the station at right angles to the tracks, but without change in the existing Alameda Street grades, or the location of sewers and conduits. The Plaza is at an elevation of approximately 17 feet above Alameda Street. In order to provide for this difference of elevation, a retaining wall is shown on the westerly line of Alameda Street in front of the head house, which would also serve as an abutment for a foot bridge from the Plaza level to the station. The main portion of the station building is 400 feet long, 120 feet wide, and 60 feet high. The concourse is 400 feet long, 50 feet wide, and about 20 feet high (Tr. 2596-2597).

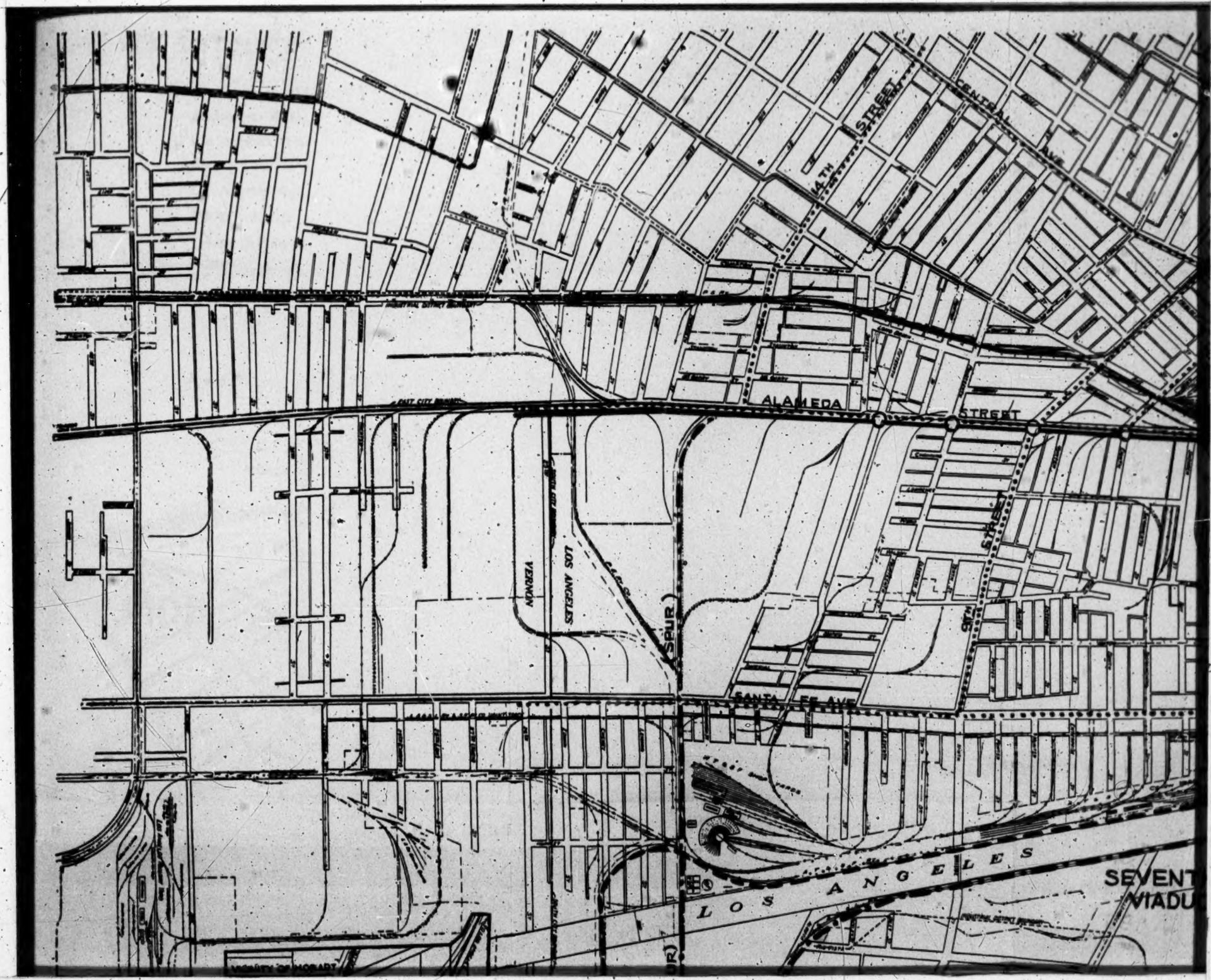
I am describing the same Union Station building as formerly described in my testimony before the Interstate Commerce Commission referring to Exhibit 23 in that proceeding. That is true of all this description I am now giving of a union depot plan, which is the plan shown in Railroad Commission's Exhibit No. 4 (Tr. 2598).

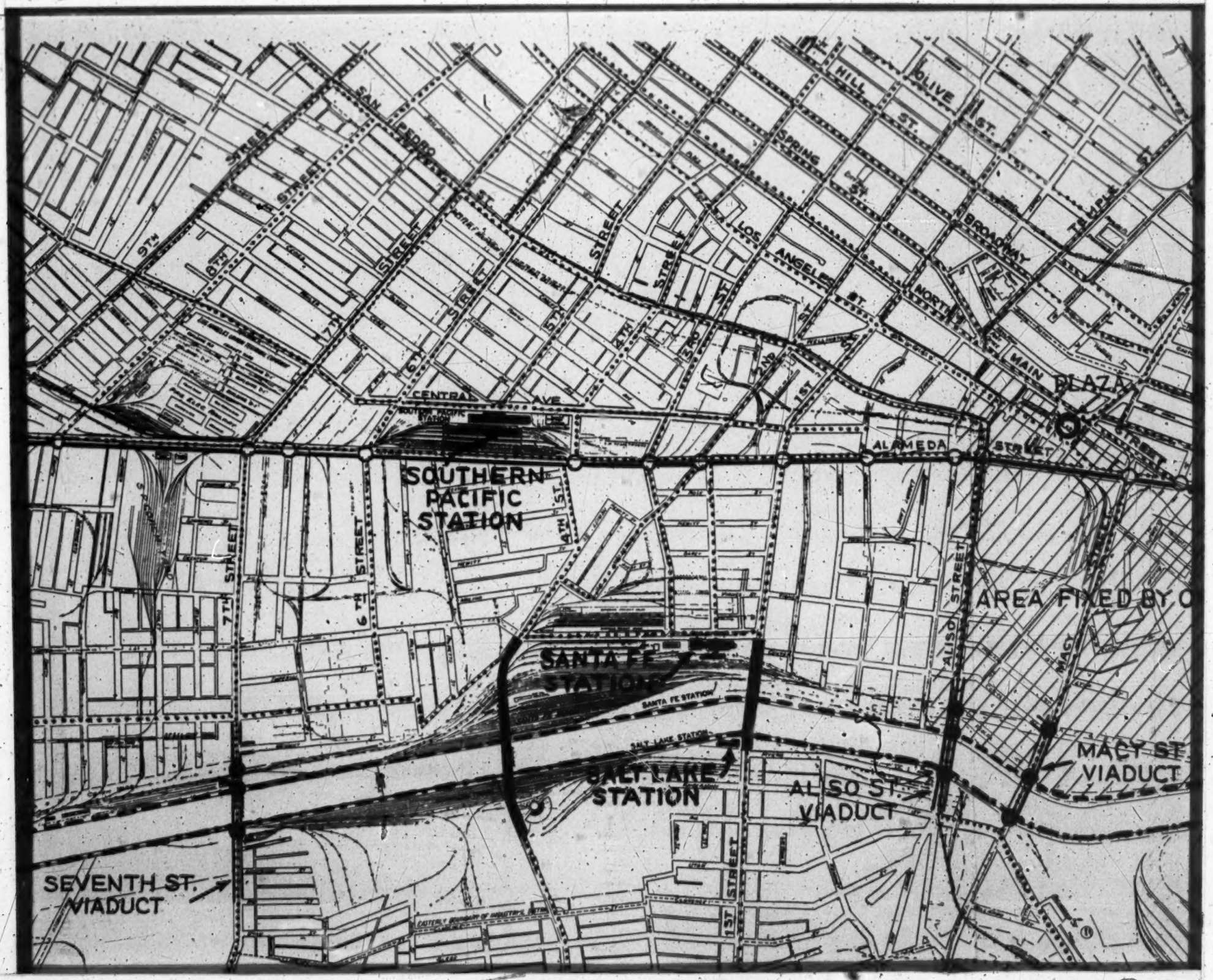
The tracks of the Los Angeles and Salt Lake Railroad are on the east bank of the Los Angeles River. Certain trains of the Southern Pacific Company are brought into the City of Los Angeles from the east by way of Alhambra Avenue and the Yuma line. I have included in my plan for a Plaza Union Station a bridge across the Los Angeles River. It is planned to cross the River by means of a double deck bridge, the lower level of which will be occupied by steam railroad tracks, while the upper level will be occupied by a combined railway and highway structure, providing for the Pacific Electric and vehicular traffic. The plan shows inclines for the vehicular portion on the east bank permitting a separation of grades from the Pacific Electric traffic, while on the west side the Pacific Electric tracks are shown occupying their normal position in the [fol. 381] center of the street (Tr. 2601-2602).

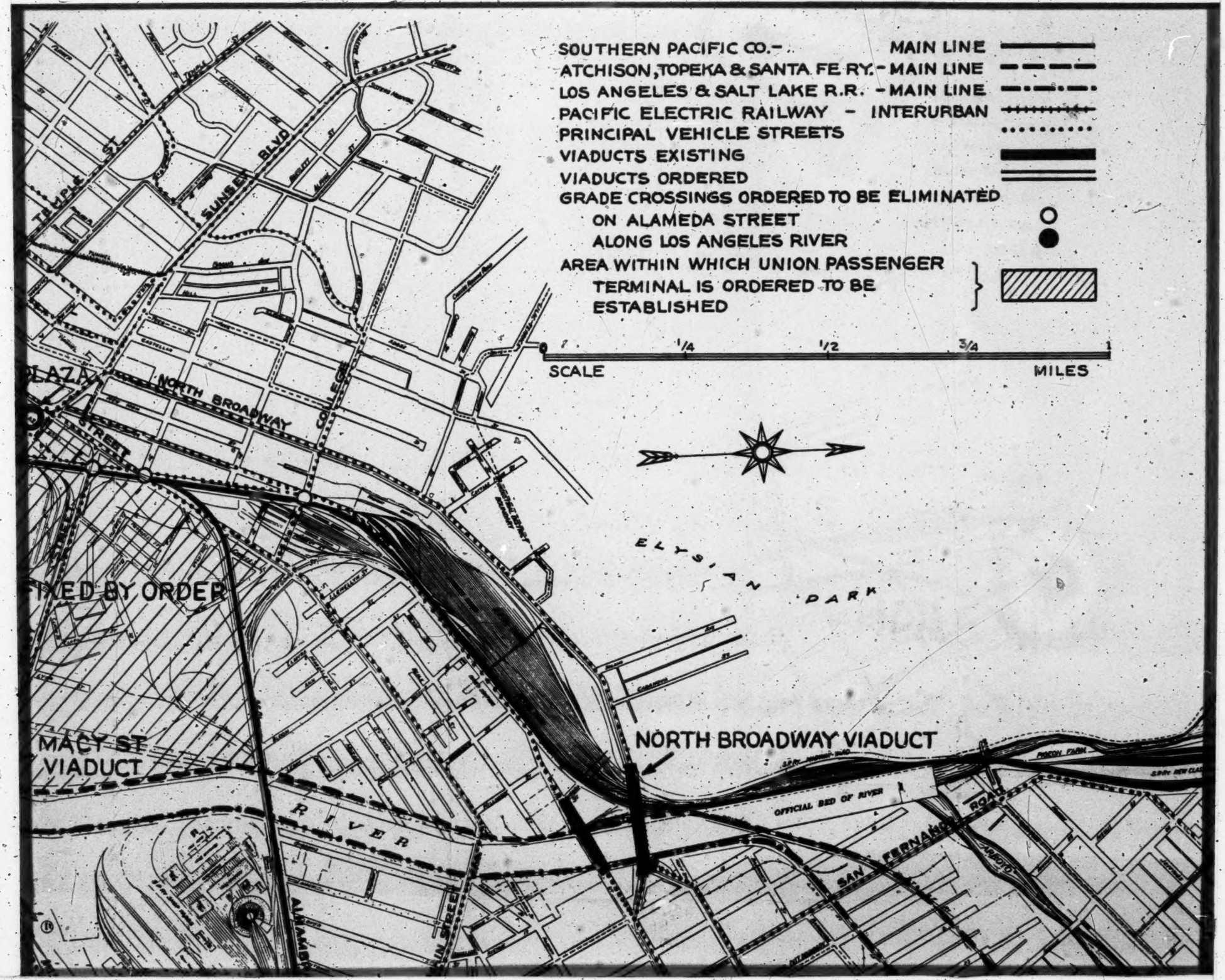
The Southern Pacific and Santa Fe trains would reach the station from the north by means of the west bank tracks

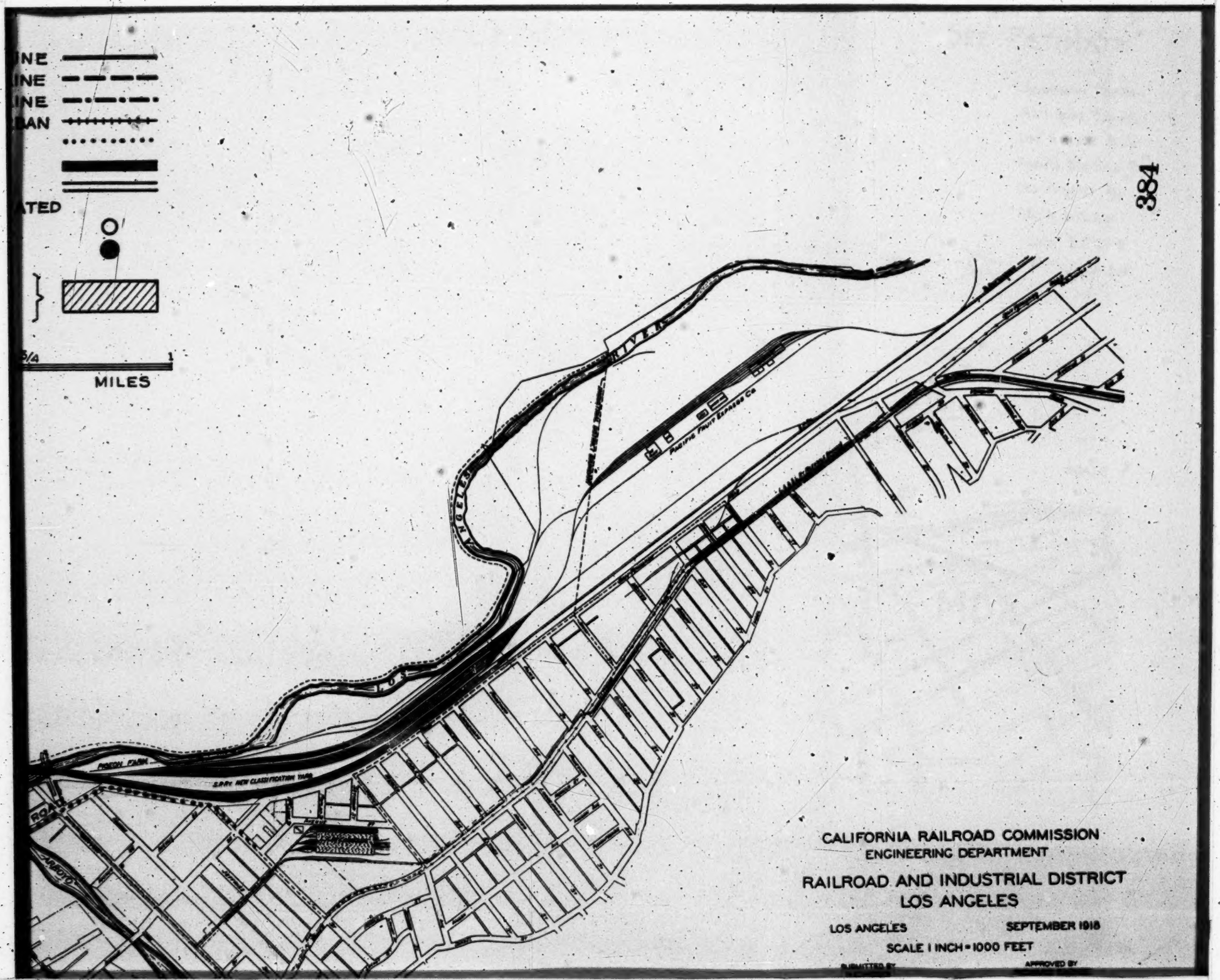

ALAMEDA ST.
AVILA ST.
CLARA ST.
MACY ST.
AVILA ST.
LYON ST.
OLVERA ST.
EXISTING TEAM TRACKS
RAMIREZ
ST.
NORTH MAIN ST.
PLAZA
LOS ANGELES ST.
UNION DEPOT
CONCOURSE
SANCHEZ ST.
RAILWAY EXPRESS BUILDING
EXPRESS TEAM TRACKS
ST.
ALISO
ST.
GARCIA ST.
ST.
VIGNES
COMMERCIAL
DUCOMMON ST.
CALIFORNIA RAILROAD COMMISSION
ENGINEERING DEPARTMENT
TRANSPORTATION DIVISION

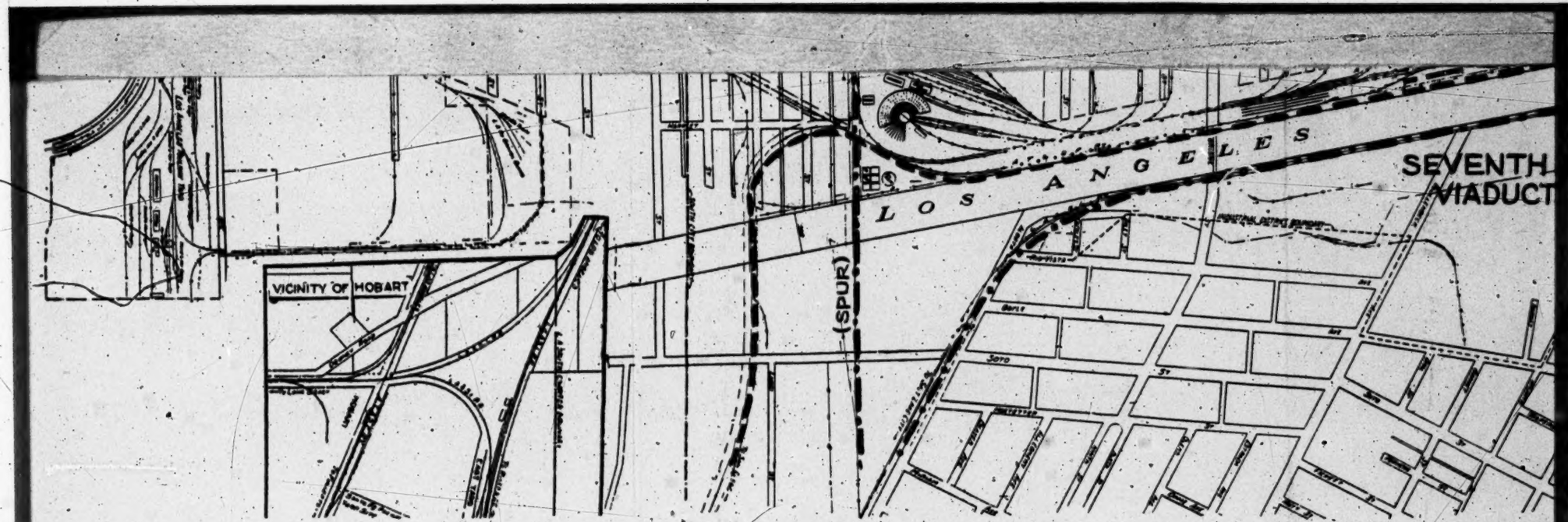

CALIFORNIA RAILROAD COMMISSION
EXHIBIT 4
AVILA ST.
CLARA ST.
ST.
AVILA ST.
LYON ST.
HOWARD ST.
CENTER ST.
KELLER ST.
LOS ANGELES RIVER
RAMIREZ
ST.
ELLIOTT ST.
INCLINE
INCLINE
INCLINE
ST.
INCLINE
ST.
ST.
VIGNES
INCLINE
DUCOMMON ST.
MMON ST.
PLAN
FOR A
UNION PASSENGER TERMINAL
AT THE PLAZA
LOS ANGELES JUNE. 1924.
382

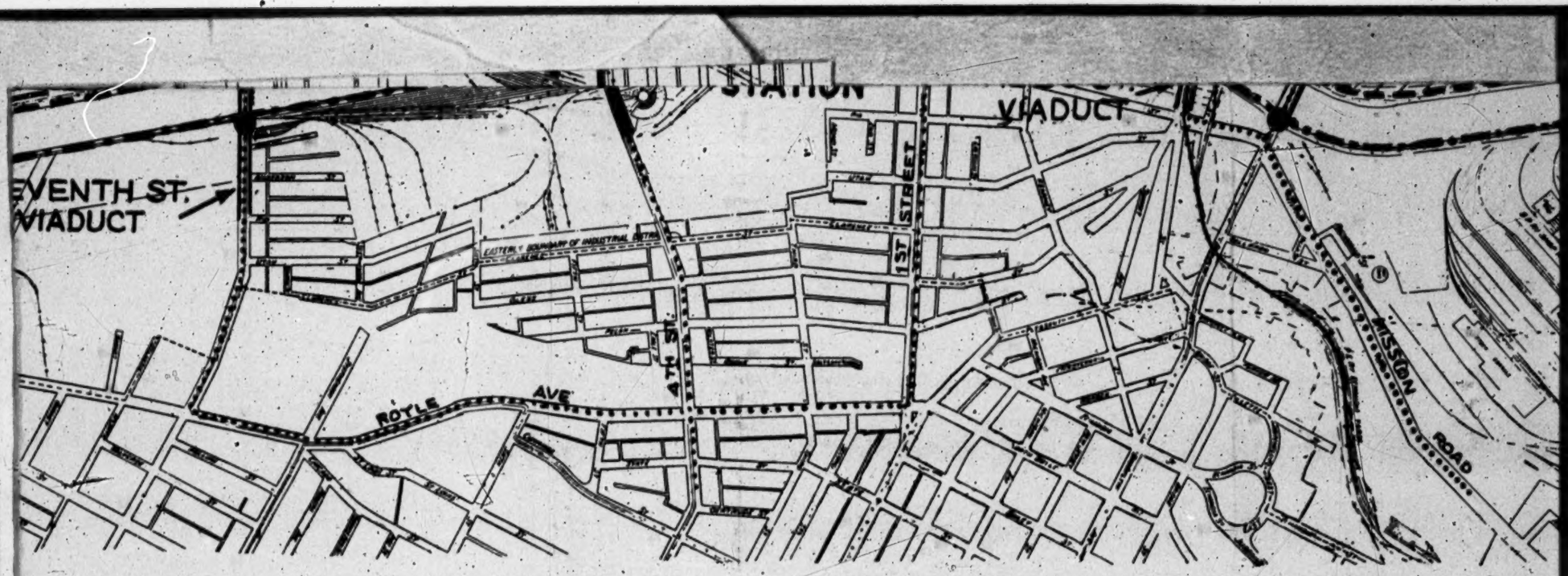

ALAMEDA
STREET
VERNON
LOS ANGELES
SPUR)
SANTA FE AVE
L O S A N G E L E S

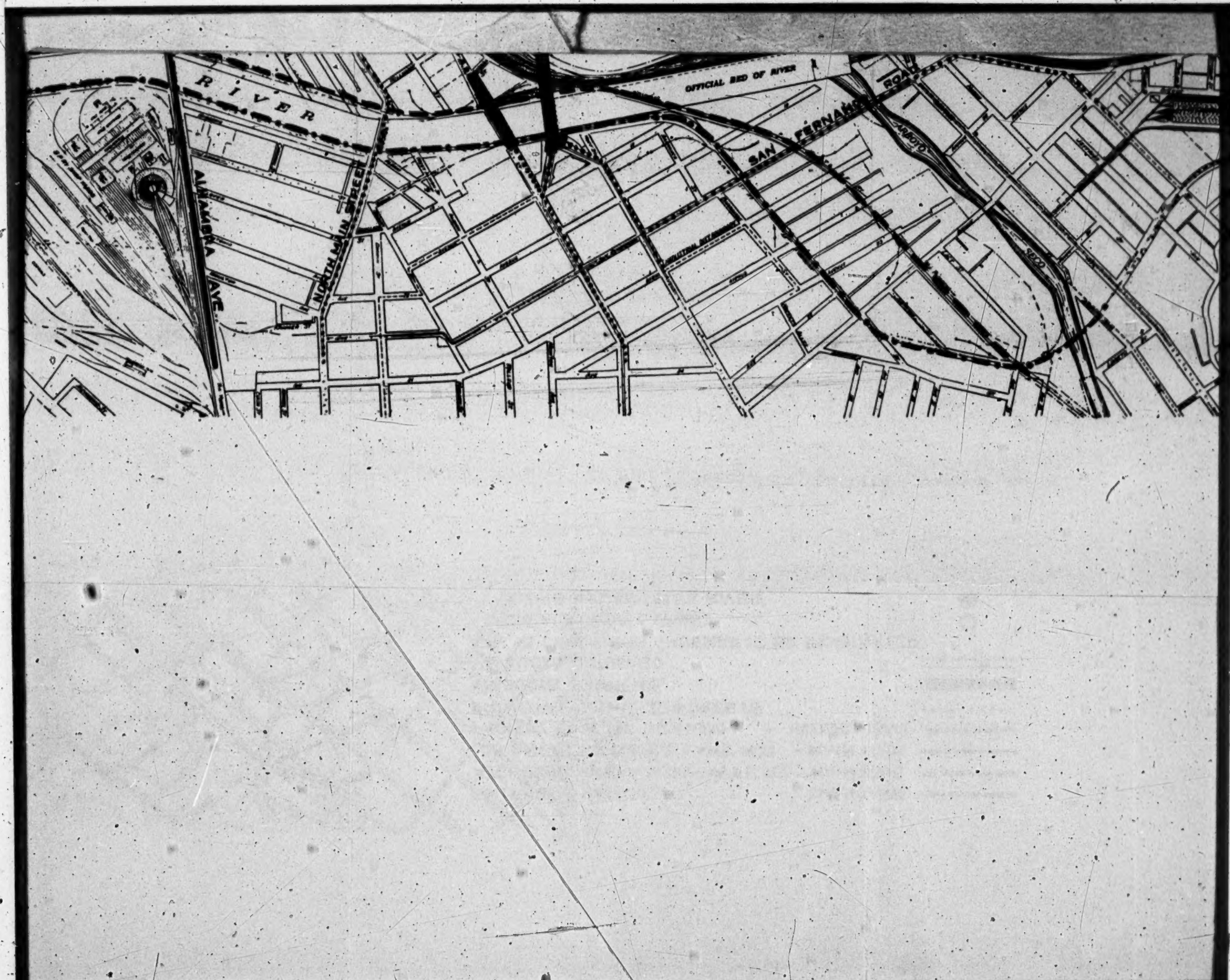

SOUTHERN PACIFIC STATION
SANTA FE STATION
SALT LAKE STATION
ALISO ST. VIADUCT
MACY ST. VIADUCT
SEVENTH ST. VIADUCT
AREA FIXED BY O
MAIN PLAZA
ALAMEDA STREET
CENTRAL AVE
SAN PEDRO STREET
SPRING ST.
HILL ST.
OLIVE ST.
BROADWAY
TEMPLE ST.
LOS ANGELES ST.
NORTH MAIN ST.
1ST STREET
4TH STREET
6TH STREET
7TH STREET
ALISO STREET
MACY

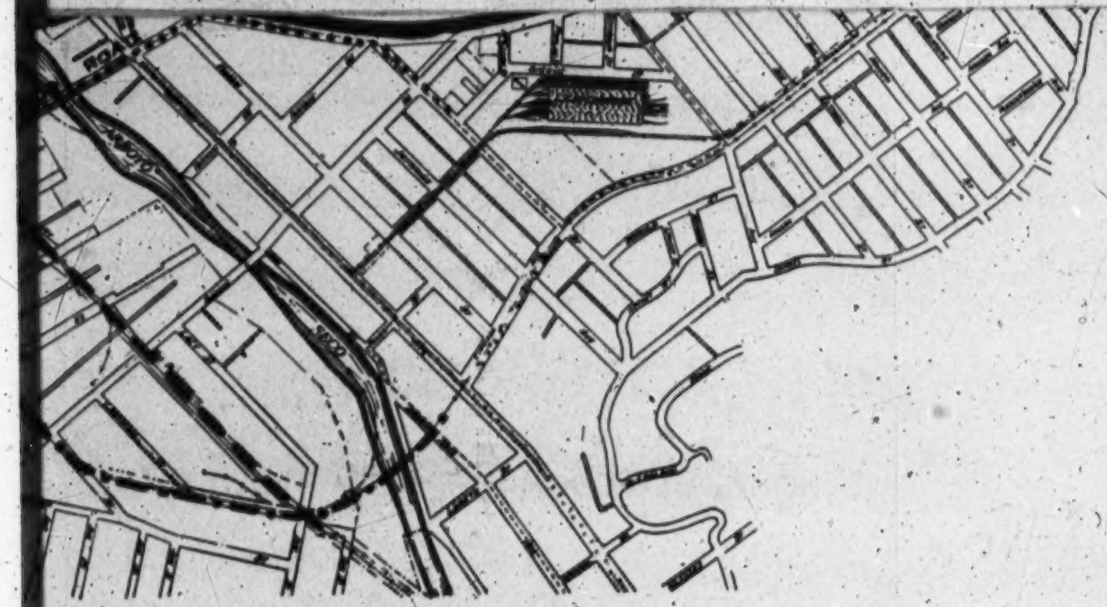

SOUTHERN PACIFIC CO.- MAIN LINE
ATCHISON, TOPEKA & SANTA FE RY.- MAIN LINE
LOS ANGELES & SALT LAKE R.R. - MAIN LINE
PACIFIC ELECTRIC RAILWAY - INTERURBAN
PRINCIPAL VEHICLE STREETS
VIADUCTS EXISTING
VIADUCTS ORDERED
GRADE CROSSINGS ORDERED TO BE ELIMINATED
ON ALAMEDA STREET
ALONG LOS ANGELES RIVER
AREA WITHIN WHICH UNION PASSENGER TERMINAL IS ORDERED TO BE ESTABLISHED
0
1/4
1/2
3/4
1
SCALE
MILES
TEMPLE ST
SUNSET BLVD
NORTH BROADWAY
COLLEGE
PLAZA
STREET
FIXED BY ORDER
ELYSIAN PARK
MACY ST VIADUCT
NORTH BROADWAY VIADUCT
RIVER
OFFICIAL BED OF RIVER
SAN FERNANDO
ARROYO
ALAMEDA
MAIN STREET


INE
INE
INE
BAN
ATED
3/4
1
MILES
384
PACIFIC FRUIT EXPRESS CO
PIGEON PARK
S.P.R.R. NEW CLASSIFICATION YARD
ROAD
SUMMIT
CALIFORNIA RAILROAD COMMISSION
ENGINEERING DEPARTMENT
RAILROAD AND INDUSTRIAL DISTRICT
LOS ANGELES
LOS ANGELES
SEPTEMBER 1918
SCALE 1 INCH = 1000 FEET
SUBMITTED BY
APPROVED BY


VICINITY OF HOBART
(SPUR)
LOS ANGELES
SEVENTH
VIADUCT


STATION
VIADUCT
EVENTH ST.
VIADUCT
EASTERLY BOUNDARY OF INDUSTRIAL DISTRICT
1ST STREET
4TH ST.
ROYLE
AVE
MISSION
ROAD


RIVER
OFFICIAL BED OF RIVER
ROAD
SAN FERNANDO
ALHAMBRA AVE.
NORTH MAIN STREET



CALIFORNIA RAILROAD COMMISSION
ENGINEERING DEPARTMENT

RAILROAD AND INDUSTRIAL DISTRICT
LOS ANGELES

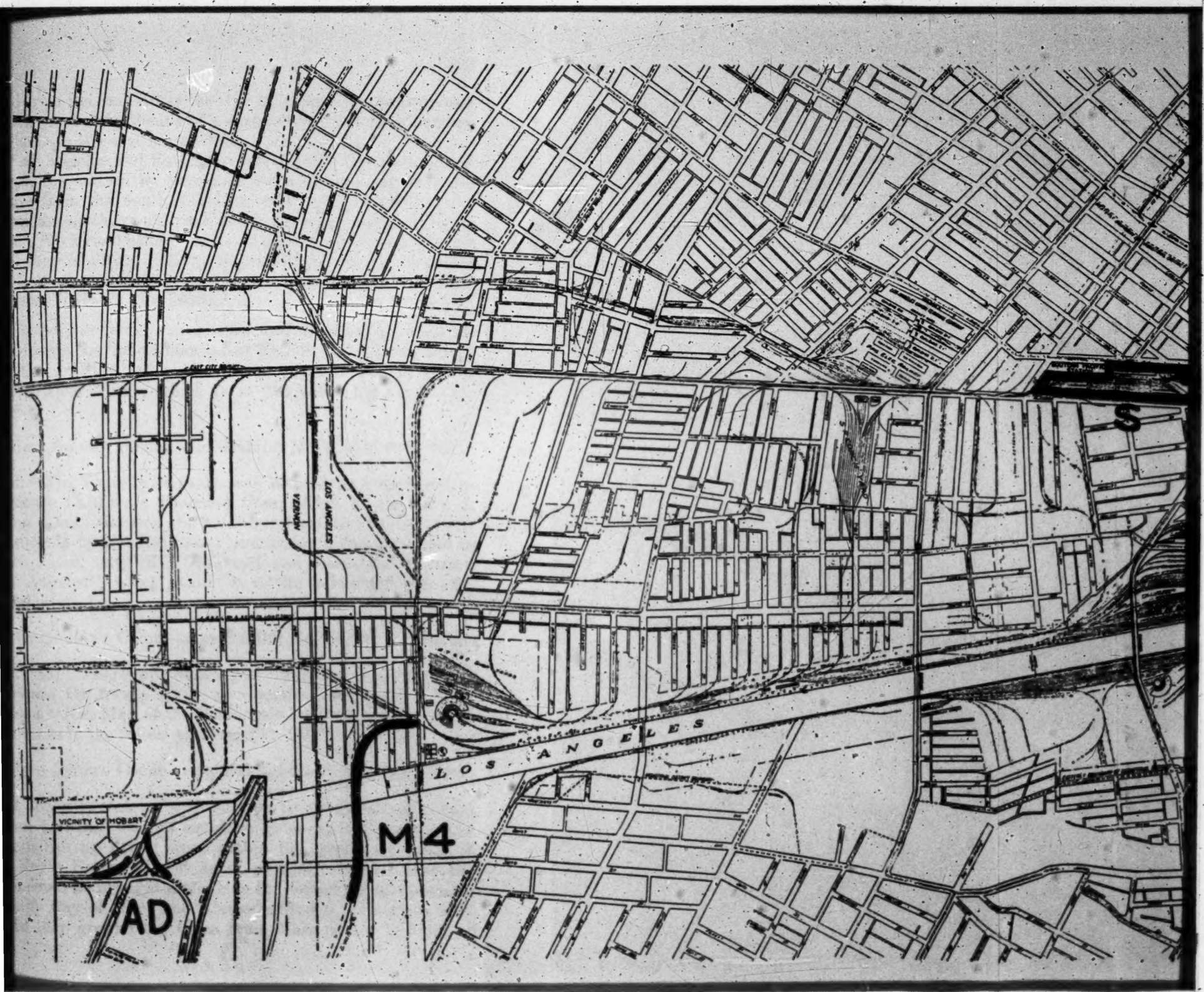
LOS ANGELES SEPTEMBER 1918

SCALE 1 INCH = 1000 FEET

SUBMITTED BY
H.G.WEEKS
ASSISTANT ENGINEER

APPROVED BY
RICHARD SACHSE
CHIEF ENGINEER

CALIFORNIA RAILROAD COMMISSION
EXHIBIT 5


VERNON
LOS ANGELES
LOS ANGELES
VICINITY OF HOBART
M4
AD
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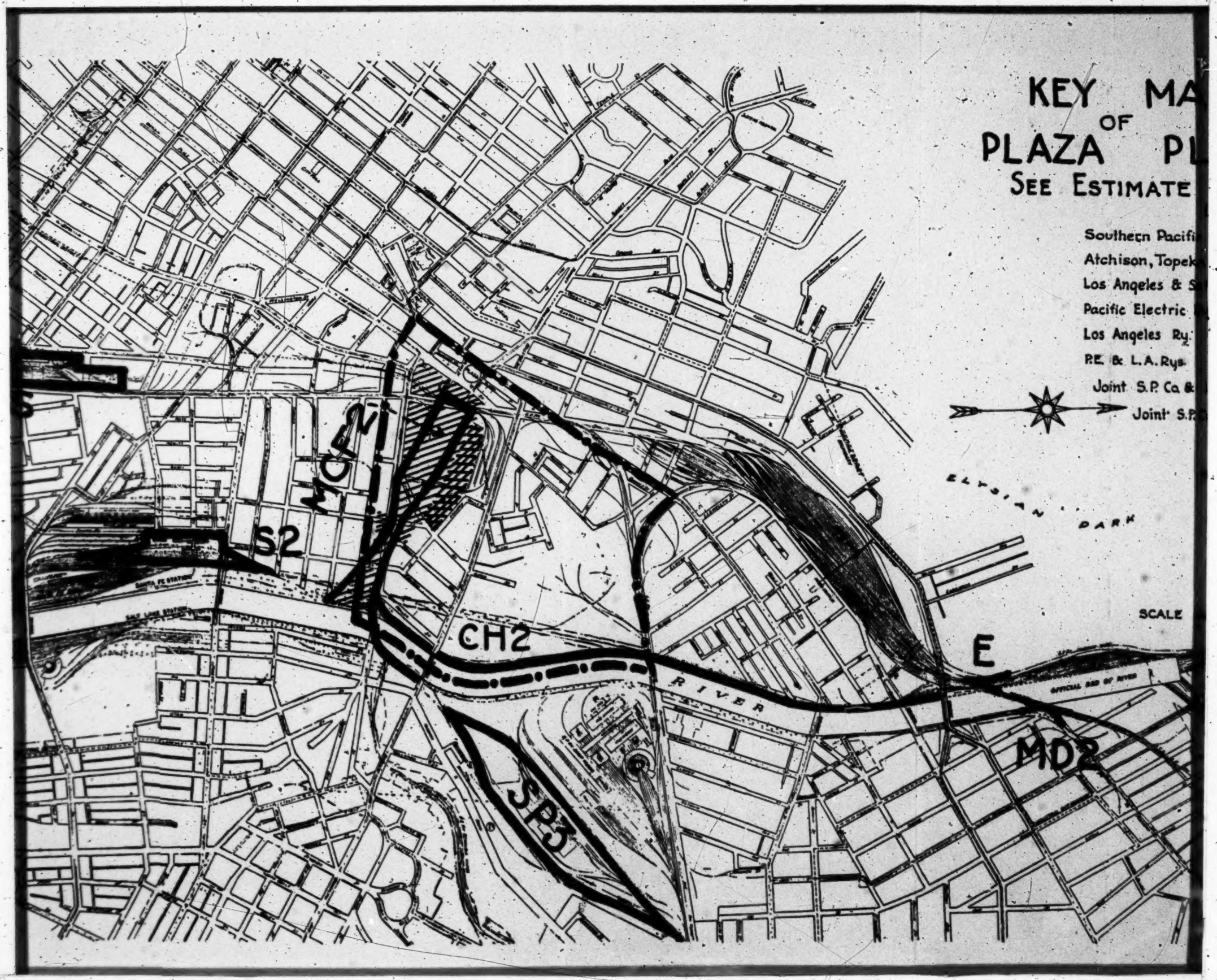
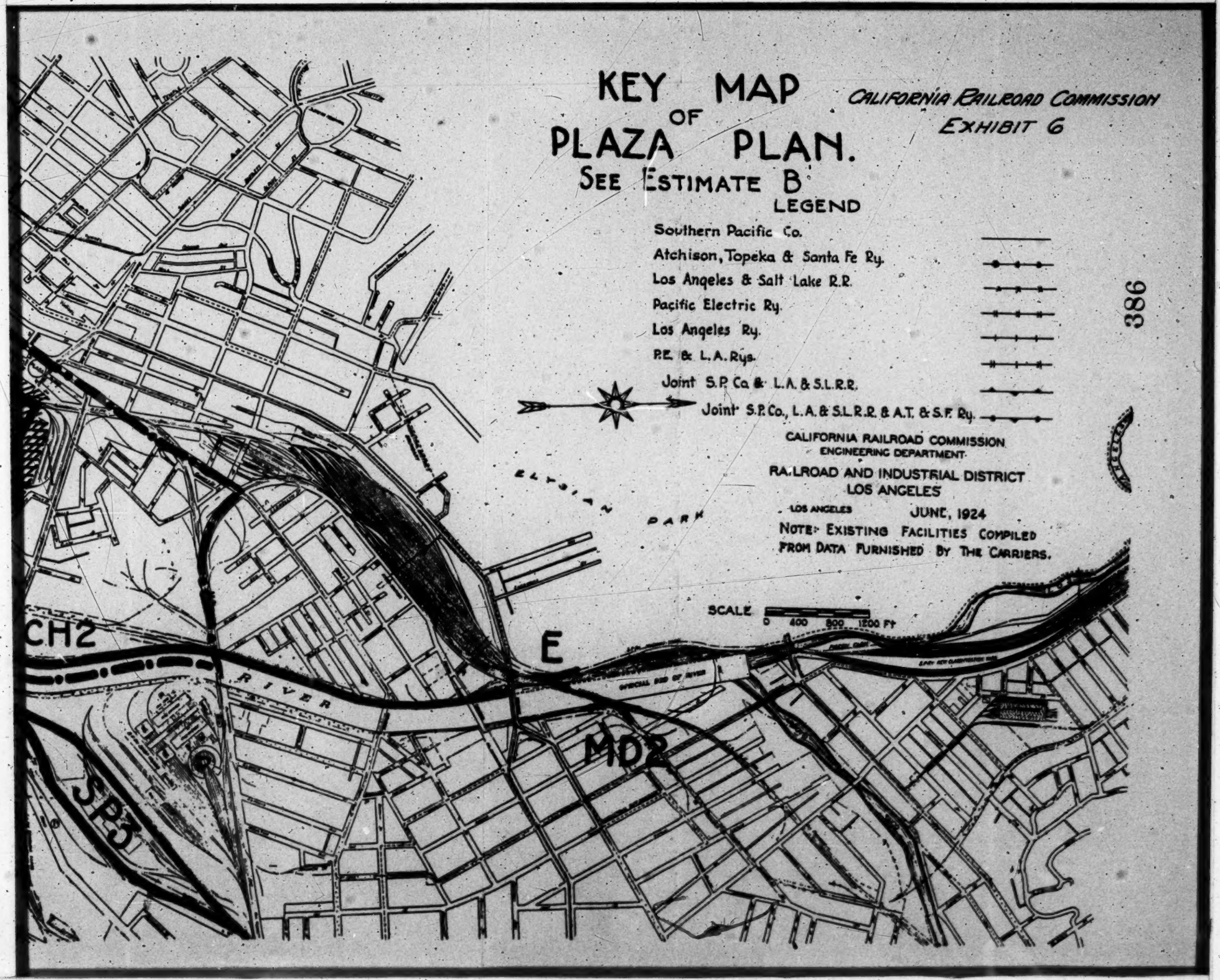

KEY MA
OF
PLAZA PL
SEE ESTIMATE
Southern Pacifi
Atchison, Topek
Los Angeles & S
Pacific Electric
Los Angeles Ry.
P.E. & L.A. Rys.
Joint S.P. Co. &
Joint S.P.
ELYSIAN PARK
SCALE
MCP
S2
CH2
E
RIVER
OFFICIAL END OF RIVER
MD2
SP3
SANTA FE STATION
SALT LAKE STATION


KEY MAP OF PLAZA PLAN.
SEE ESTIMATE B
CALIFORNIA RAILROAD COMMISSION
EXHIBIT 6
LEGEND
Southern Pacific Co.
Atchison, Topeka & Santa Fe Ry.
Los Angeles & Salt Lake R.R.
Pacific Electric Ry.
Los Angeles Ry.
P.E. & L.A. Rys.
Joint S.P. Co. & L.A. & S.L.R.R.
Joint S.P. Co., L.A. & S.L.R.R. & A.T. & S.F. Ry.
386
CALIFORNIA RAILROAD COMMISSION
ENGINEERING DEPARTMENT
RAILROAD AND INDUSTRIAL DISTRICT
LOS ANGELES
LOS ANGELES JUNE, 1924
NOTE: EXISTING FACILITIES COMPILED FROM DATA FURNISHED BY THE CARRIERS.
ELYSIAN PARK
SCALE
0 400 800 1200 Ft
CH2
E
RIVER
MD2
SP3

and from the east either through or along side the proposed coach yard or by means of a connecting curve at Alhambra Avenue to the east bank tracks.

Los Angeles and Salt Lake trains from the north would reach the station by means of the east bank tracks while those from the south, together with the Santa Fe trains from the south, would pass along the west bank to the station. Each road would use its own coach yard, round house and shop facilities. The Southern Pacific coach yard would be located as indicated on the key map of the Plaza plan lettered "SP-3" (Tr. 2605).

Thereupon there was offered and admitted in evidence California Railroad Commission Exhibit No. 4, being a map entitled: "Plan for a Union Passenger Terminal at the Plaza June 1924", which is in the following form (Tr. 2596):

(Here follows Commission Exhibit No. 4, side folio 382)

[fol. 383] Thereupon there was offered and admitted in evidence California Railroad Commission Exhibit No. 5, being a map showing the location of existing stations and area fixed by the Railroad Commission's former order in these cases, entitled: "Railroad and Industrial District, Los Angeles", which exhibit is in the following form (Tr. 2606):

(Here follows Commission Exhibit No. 5, side folio 384)

[fol. 385] Thereupon there was offered and admitted in evidence California Railroad Commission Exhibit No. 6, being a "Key Map of the Commission's Plaza Plan", which exhibit is in the following form (Tr. 2607):

(Here follows Commission Exhibit No. 6, side folio 386)

[fol. 387] Street railway service to the proposed Plaza union terminal station could be given by terminating the North Spring Street lines within the grounds instead of on North Spring Street as at present. In this case the cars could be brought along side the concourse on the north side by way of Macy and Alameda Streets, or certain lines could loop around the Plaza from Main Street in front of

the station. The Los Angeles Railway Company now sends certain cars down Main Street which turn into Sunset and from there into North Spring Street. The Pacific Electric line could continue north from Aliso Street along Los Angeles Street to a stub terminal at the station. The Pacific Electric Railway operates a line of electric railway along Los Angeles Street turning into Aliso Street. Passengers from the Long Beach and other southern division trains of the Pacific Electric Railway Company reach the station by transferring at Sixth and Main; or direct service could be furnished, if desired, by way of San Pedro Street. Taxi cabs and autos could serve the station either at the upper or lower levels. These two levels are now connected by way of Los Angeles Street (Tr. 2609-2610, November 30, 1925).

If a union station were constructed in the Plaza area, the Arcade Station and the Santa Fe stations could be eliminated and devoted either to other railroad uses or sold (Tr. 2622).

R. B. BALL was called as a witness on behalf of defendants and, having been duly sworn, testified as follows:

I am the Chief Engineer of the Atchison Topeka & Santa Fe Railway Company, Coast Lines. I have prepared a map showing the proposed track layout and tentative layout for a station at the Santa Fe site (Tr. 2988-2989).

I have made an estimate of the cost of the facilities shown on the map referred to so far as they require changes in existing facilities. The total cost of these facilities would be about $1,182,317. Against that figure there is a credit for salvage of $175,188. The net charge to capital account would be the difference of these two figures (Tr. 2990, January 7, 1926).

[fol. 388] Thereupon there was offered and admitted in evidence Atchison Topeka & Santa Fe's Exhibit No. 3, entitled: "Estimated cost of Proposed Depot, etc., for exclusive use of Santa Fe, Los Angeles", which is in the following form (Tr. 2992):

A., T. & S. F. Exhibit No. 3, Cases 970-971 et seq., Jan. 7, 1926

Estimated Cost of Proposed Depot, etc., for Exclusive Use of Santa Fe, Los Angeles

Office of Chief Engineer, Los Angeles, California, December, 1925

New work:		
New Depot and Furnishings	750,000	
Platforms, 85000 sq. ft. @ 25c	21,250	
Add'l air, water, steam & sewer lines	4,000	
Signal Work	2,000	
Track subways 6 tracks	50,000	
Umbrella Sheds	90,000	
Electric lighting, additional	2,500	
Power Plant	25,000	
Paving, curbing, sidewalks	5,000	
	949,750	
Engr. contingencies, etc.	189,950	
		1,139,700
Incidental operating expense:		
Move 17065 ft. 90# track @ 40c	6,826	
" 35 turnouts @ $100.	3,500	
Renew 2000 ties @ $1.50	3,000	
" 100 Kegs track spikes @ 5.60	560	
Plug and reclaim ties	600	
Store expense 3% on $1160	35	
Remove 14481 ft. of track retired @ 25c	2,896	
Remove 21 turnouts retired @ $50	1,050	
Engineering	800	
Grading and leveling	350	
	19,617	
Clear site	10,000	
Landscape	5,000	
Rearrange old pipe lines	2,000	
Remove and renew signals	1,500	
" " " elec. lights	1,000	

Move express building	2,000	
" P. O. "	1,500	
Total Incidental		42,617
Total		1,182,317
Less Credits		175,188
Net Charge to A. & B.		1,007,129

[fol. 389] Credits to A. & B.

Retirements (ledger value):		
14481 ft. 75# track complete @ 1.80	26,066	
21 Frogs & Switches complete @ 205	4,305	
Miscl. buildings, etc.	102,200	
Total Retirement		132,571
Incidental operating expense:		
As detailed	42,617	
Total Incidental		42,617
Total Credits to A. & B.		175,188

Summary of Total Cost

Class 17	A. & B.	Retirement	Incidental	Total
Station Facilities	$1,007,129	$132,571	$42,617	$1,182,317

[fol. 390] Geo. S. Hill, recalled as a witness on behalf of the California Railroad Commission and having been duly sworn, testified as follows:

I have prepared estimates of cost in connection with the Plaza plan for a Union Passenger Terminal for the steam railroads in Los Angeles (Tr. 3041, March 2, 1926).

Thereupon there was offered and admitted in evidence California Railroad Commission Exhibit No. 13 entitled "New Money required for Plaza Plan", which is in the following form (Tr. 3042):

Case 970

COMMISSION'S EXHIBIT No. 13

California Railroad Commission, Engineering Department, Transportation Division

New Money Required for Plaza Plan

Item	Key	Amount
1. Passenger Station and Facilities	MCF2	$7,989,143
2. Coach Yards	SP3	416,780
3. New Trackage and Connections	E, MD2, M4, AD	258,480
Arroyo Seco Bridge, East Bank Freight line north of Macy Street and connections at Alhambra Ave	SP2, SL2	511,200
Sub-total		$9,175,603
4. Salvage value of Released Property:		
Southern Pacific Station Site	S	2,503,000#
Santa Fe Station Site	S2	950,000#
Total		$5,722,603

Credit.

G. S. H.
February, 1926.
(VIII-a.)

[fol. 391] Thereupon there was offered and admitted in evidence California Railroad Commission Exhibit No. 14, being entitled: "MCF2—Estimated Cost, Passenger Facilities Plaza Plan", which is in the following form (Tr. 3042):

Case 970

COMMISSION'S EXHIBIT No. 14

California Railroad Commission, Engineering Department, Transportation Division

MCF2—Estimated Cost, Passenger Facilities, Plaza Plan

Item, description	Quantity	Unit	Per unit	Amount
1. Excavation	10,000	C. Y.	.70	$7,000
2. Fill	150,000	C. Y.	.21	31,500
3. Retaining Walls, concrete	2,615	C. Y.	15.	39,225
4. Tracks	41,000	Ft.	5.	205,000
5. Switches, Split	40	....	400.	16,000
6. " Double Slip	16	....	1800.	28,800

Item, description	Quantity	Unit	Per unit	Amount
7. Crossings	21	....	1200.	25,200
8. Interlocking Equipment	.....	....	.....	250,000
9. Paving Curb and Gutter	.....	....	.....	107,500
10. Station Building	.....	....	.....	1,500,000
11. Umbrella Sheds	7,000	Ft.	20.	140,000
12. Drainage, Yard Lighting, Piping, etc.	.....	....	.....	136,000
13. Sub-total	.....	....	.....	$2,485,225
14. Engineering, Interest and General—27%	.....	....	.....	671,280
15. Sub-Total	.....	....	.....	$3,157,505
16. Land (approximately 39.65 acres) (including 12% interest)	.....	....	.....	3,140,364
17. Improvements on lands taken, (including 12% interest)	.....	....	.....	1,176,624
18. Aliso Street Bridge, including extra cost of viaduct	.....	....	.....	514,650
Total	.....	....	.....	$7,989,143

G. S. H.
February, 1926.
(IX-a.)

[fol. 392] One of the exhibits which will later be introduced by Mr. Hopkins gives a total number of scheduled trains of all the steam road lines entering Los Angeles as 78. Of these trains 69 per cent, or over two-thirds, enter and leave the city north of the Plaza. 42 of the 78 scheduled trains pass under the North Broadway Bridge. 12 of them enter and leave by way of Alhambra Avenue, and 24, or a little less than one-third, enter or leave the city from the south (Tr. 3065-3066).

The American Railway Engineering Association Committee on yards and terminals in 1923 prepared a valuable report upon the relation which should exist between business handled and the size of through passenger station facilities, made after thorough investigation of the adequacy of nearly all the principal terminals in the United States. This report shows, among other things, that the total area of lobby, concourse and all waiting rooms for a station handling one thousand passengers per busy hour, which is the approximate present volume at the Arcade Station, should be 25,600 square feet. In the Arcade Station there is 21,800 square feet. The approximate volume of passengers per busy hour at the Arcade Station is one thousand. For such an operation the American Railway Engineering Association's Committee report states there

should be 25,600 square feet. The Arcade Station, therefore, is four thousand square feet less than said Association stated would be proper and good practice.

For a station handling 500 passengers, the approximate present volume of the Santa Fe, the station area would be 15,200 square feet, making a total of 40,800 square feet required for separate facilities. According to the said report of the American Railway Engineering Association, 32,000 square feet would be required for a union station providing for 1500 passengers per busy hour. 8,800 square feet less would be required for the union station to handle 1500 passengers per busy hour than would be required to handle [fol. 393] these passengers under the separate facilities plan (Tr. 3069-3070, Mar. 2, 1926).

E. P. McAuliffe was called as a witness on behalf of California Railroad Commission and, having been duly sworn, testified as follows:

I am Assistant Engineer of the California Railroad Commission in charge of land appraisals and have been employed continuously on valuation work and have been in charge of land appraisals since 1919. In that connection I have made appraisals of lands and rights of way of various public utilities throughout this state, and during the past five years have been engaged in valuing properties of a total value well in excess of 50,000,000 dollars (Tr. 3151-3152). I have made a valuation of the lands contained in the area embraced in the so-called Plaza plan which Mr. Hill has presented in this matter. Mr. Hill has included in his Exhibit No. 14, the figure being "land", figures given to him by me. The basis of the cost contained in Exhibit 14 is first the estimated present value of the land, plus cost of acquisition, including excess cost over present value and damages to the remaining lands not taken, if any; and 12 per cent interest during construction. The total market value of the lands comprised in the Plaza plan is $2,520,981. By adding the amounts mentioned above the value of the land plus these items is $3,140,364 (Tr. 3153).

I have made a study of the market value of the properties to be salvaged at the Santa Fe site, and estimate that value to be $950,000 (Tr. 3157).

I have made a study of the value of the land at the present Southern Pacific Arcade Station site. The total area is 689,500 square feet and the estimated salvage value of the properties is $3,103,000 (Tr. 3158). The salvage value of the station site is $2,503,000, the figure shown on Exhibit 13. This figure is approximately $600,000 less than the figure just testified to on account of the removal of the Arcade Station building, which is a debit to the land [fol. 394] salvaged, making the net salvage less (Tr. 3160, Mar. 2, 1926).

JOHN E. COOPER was called as a witness on behalf of the California Railroad Commission and, having been duly sworn, testified as follows:

I am employed by the Railroad Commission of California in the Transportation Division of the Engineering Department, and have been in the employ of the Commission over six years. During that time I have been continuously engaged in the study of transportation matters, particularly the study of valuation of different railways and other public utilities. In connection with this case I have prepared an estimate of the value of the existing improvements upon the lands to be taken for the union passenger terminal shown on Commission's Exhibit No. 4. The amount of the value of the buildings thus found is $1,176,624. This figure represents improvements on land including 12 per cent interest, and is Item No. 17, used by Mr. Hill in Exhibit No. 14 (Tr. 3160-3162).

A. G. MOTT was called as a witness on behalf of the California Railroad Commission and, having been duly sworn, testified as follows:

I am the Transportation Engineer of the California Railroad Commission. One of the important changes in the transportation situation at Los Angeles which has occurred since 1921 is that the Arcade Station of the Southern Pacific is now used jointly by the Los Angeles and Salt Lake Railroad under a temporary plan authorized by an

order of the California Commission, issued after an application by the interested carriers after hearings, the Commission's Decision being No. 13923. The Commission order contained, among others, the following conditions:

During the construction period of viaducts on the east bank of the Los Angeles River, applicants shall consult with this Commission and obtain its approval before diverting or routing freight traffic from Alameda Street to river [fol. 395] bank crossings, or vice versa; and shall comply with directions of the Commission made on its own initiative with respect to diverting or routing of freight traffic.

Applicants shall not use the granting of this application either by way of defense or argument on the ground of capital expenditure or any other ground against any order, or in any proceeding now or hereafter pending before this Commission or any other proceeding, court or public tribunal providing for or looking toward railroad or terminal unification in the City of Los Angeles.

The Commission reserves the right to make such other and further orders herein relative to the location, construction, operation, maintenance and protection of said crossings, or to the diverting or routing of freight or other traffic over them or any of them as to it may seem right and proper, and to revoke the permission hereby granted if, in its judgment, public convenience and necessity at any time demand such action (Tr. 3169-3170).

In 1860 the population of Los Angeles was 3700; in 1870 it was 5728; in 1880, 11090; in 1890, 50395; in 1900, 102,459; in 1910, 310,198; in 1915, 470,000; in 1920, 576,673; in 1921, 745,000; in 1922, 875,600; in 1923, 1,070,000; in 1924, 1,182,000. This shows a most remarkable growth from 1921 to 1923 (Tr. 3183).

[fol. 396] Thereupon there was offered and admitted in evidence California Railroad Commission Exhibit No. 19, being entitled: "Summary Vehicular Traffic Across Alameda Street," which is in the following form (Tr. 3187):

Case 970

COMMISSION'S EXHIBIT No. 19

California Railroad Commission, Engineering Department, Transportation Division

Summary

Vehicular Traffic Across Alameda Street

(1) Street	(2) 1918	(3) 1923	(4) Per cent increase 1923 over 1918	(5) January, 1926	(6) Per cent increase 1926 over 1918	(7) Street railway traffic, 1926
N. Main	4,508	9,370	108	12,487	177	241
Macy	3,017	5,867	94	2,396	21#	351
Los Angeles	2,040	6,084	198	8,495	316	...
Aliso	3,417	7,186	110	13,845	305	817
First	4,456	17,321	289	13,379	200	537
Second	2,247	5,132	128	7,170	219	301
Third	4,852	10,005	106	7,042	45	307
Fourth	3,986	9,855	147	8,827	121	...
Sixth	2,548	6,388	151	8,174	221	...
Seventh	6,249	11,604	86	11,762	88	810

Eighth	566	1,793	217	3,926	594	...
Ninth	3,028	13,095	332	18,773	520	...
Sub-total	40,914	103,700	153	116,276	184	3,364
Twenty-fifth	.....	.....	...	5,282	...	.....
Total	40,914	103,700	153	121,558	...	3,364

P. A. N.
2-16-26.

#Decrease.

[fol. 397]. Exhibit 19 represents daily figures, that is a 14-hour period from 6 a. m. to 8 p. m. in all cases. The checks in 1923 were taken in June and the checks in 1918 were taken in February, with the exception of Seventh Street, which was taken in May and Ninth Street, which was taken in March. They were all week days, no Sundays or holiday traffic included in any of these figures, and they represent normal week day traffic for the hours of 6 a. m. to 8 p. m. for the locations and in the years taken. The figures on Exhibit 19 show a very remarkable increase in much of the traffic. There has been a continued increase in the traffic at every one of these intersections, with the exception of Macy Street. The light traffic at Macy Street is, of course, explained by the fact that the Macy Street Bridge is now not open for traffic across the River, and therefore, the present traffic of Macy Street is only the local traffic which is destined to or originates in that industrial area between Macy Street and the River (Tr. 3189).

A check of traffic at Fourth Street and south of Fourth Street shows a marked increase as to railroad traffic. The crossings at Fourth and Sixth Streets themselves are affected primarily by the switching movements incident to passenger train operations at the Arcade Station. These crossings, together with those southerly from Sixth have their increase in railroad traffic largely explained by the diversion of the Salt Lake trains into the Arcade Station (Tr. 3192). Alameda Street as a whole shows a 30 per cent increase in railroad traffic as compared with 1918, but only a 2 per cent increase as compared with 1923. The vehicular traffic along Alameda Street is more than five times as great as it was in 1918, an increase of 562 per cent. It thus appears that the congestion which was ad-
[fol. 398] mitted by all parties in 1918 to be so serious as to demand relief has now become very much more serious (Tr. 3193, March 3, 1926).

Thereupon there was offered and admitted in evidence California Railroad Commission Exhibit No 22, being entitled: "Automobile Registration Statistics Growth in Automobile Registration," which is in the following form (Tr. 3196):

[fol. 399]

Case 970

COMMISSION EXHIBIT No. 22

California Railroad Commission, Engineering Department, Transportation Division

Automobile Registration Statistics—Growth in Automobile Registration

County	1914	1918	1923	Per cent increase 1923 over 1918	1925	Per cent increase 1925 over 1918
Los Angeles	43,099	107,232	425,582	297	578,298	439
Orange	3,761	9,430	32,604	246	35,177	273
San Bernardino	3,198	8,342	23,711	184	31,305	275
Ventura	1,410	3,763	9,865	162	12,599	235
Sub-total	51,468	128,767	491,762	282	657,379	410
Balance of State	72,048	236,033	608,521	158	783,162	232
Total State	123,516	364,800	1,100,283	202	1,440,541	295
Percentage of total registrations in Los Angeles Co.	35	29	39	....	40	....
In 4 Cos. shown	42	35	45	....	46	....

Data obtained from records of Motor Vehicle Division—State of California

Figures include trucks but exclude motorcycles and trailers.

P. A. N.
2-16-26
(5)

[fol. 400] Thereupon there was offered and admitted in evidence California Railroad Commission Exhibit No. 23, being entitled: "Delays to Traffic at Alameda Street Crossings 1918 and 1923", which is in the following form (Tr. 3198):

Case 970

COMMISSION'S EXHIBIT No. 23

California Railroad Commission, Engineering Department, Transportation Division

Delays to Traffic at Alameda Street Crossings, 1918 and 1923

Location	1918	1923	Increase	
			Time	Per cent
No. Spring St.	#	1 hr. 14' 31"	.....	.....
No. Main St.	#	1 hr. 4' 14"	.....	.....
Macy St.	1 hr. 9' 05"	1 hr. 31' 11"	31' 11"	32%
Los Angeles St.	#	1 hr. 26' 10"	.....	.....
Aliso St.	1 hr. 19' 30"	2 hr. 7' 43"	43' 13"	61%
First St.	1 hr. 15' 0"	2 hr. 13' 10"	58' 10"	78%
Second St.	1 hr. 33' 0"	1 hr. 24' 55"	8' 5"	2%9*
Third St.	1 hr. 41' 50"	1 hr. 59' 30"	17' 40"	17%
Fourth St.	1 hr. 18' 40"	3 hr. 44' 37"	2 hr. 25' 57"	186%
Sub-total	.....	16 hr. 46' 1"	.....	.....
Sixth St.	2 hr. 15' 45"	3 hr. 44' 30"	1 hr. 28' 45"	65%
Seventh St.	0 hr. 54' 00"	1 hr. 38' 32"	44' 32"	82%
Eighth St.	#	0 hr. 59' 28"	.....	.....
Ninth St.	0 hr. 28' 35"	1 hr. 12' 45"	44' 10"	155%
Sub total	.....	7 hr. 35' 15"	.....	.....
Total	.....	24 hr. 21' 16"	.....	.....

A. A. A.
7-3-23.
(5a.)

#No record.
*Decrease.

[fol. 401] Exhibit 23 shows delays of traffic from 6 a. m. to 8 p. m. (Tr. 3198).

Not only is it generally conceded that this matter of congestion and inconvenience of the Alameda Street grade crossing situation is so intolerable that relief must be afforded, but, as I understand it, the general manner of affording that relief is fairly well agreed upon by all concerned; that is, that the through train movements, steam

railroad movements should be eliminated along Alameda Street. The tracks themselves, all are pretty well agreed, should remain in order to accommodate the industrial switching to the number of industries, I think nearly 300 in number, that are served by that track along Alameda Street. With the removal of the through trains and coach and engine movements along Alameda Street, and the restriction of the industrial switching to night hours when the vehicular traffic is relatively light, I believe that it can be said that the Alameda Street situation, now so serious, would be corrected. Now, in order to accomplish this general plan of relief, as I understand it, there are two general principles, or plans of applying that. One would be by the construction of a viaduct, overhead railroad, that is, to take the trains off the street, to bring them in other than at grade to the Southern Pacific station, and thereby leave the actual terminal facilities at that site, and at the Santa Fe site substantially as they are. The other is to so change the steam railroad terminal facilities that use would no longer be made of the Arcade site for that purpose (Tr. 3199-3200).

The Santa Fe's passenger station is not inherent in the consideration of the relief of Alameda Street itself. It thus appears to me that the underlying problem of this situation is not a question of whether there should be a union station. It is a question of the manner of providing adequate trunk line terminal facilities in Los Angeles in such a manner that the relief will be had to the intolerable grade crossing situation, particularly along Alameda [fol. 402] Street. In determining the precise manner in which this general problem should be solved, regard must be given to the adequacy of those terminal facilities that are to be had, the accessibility and convenience of those facilities to the public, the convenience and economy of railroad operation at the facilities, and the economy of construction. No one factor in my opinion should be used as the controlling test in the solution. Analyzing a little further the proposition and plans for relief, there seem to be now three specific proposals before the Commission, namely, one the carriers' proposal to use the existing facilities, or station facilities for terminals for the steam rail-

roads, modified by giving the railroads access to the Arcade site by means of a viaduct, or overhead elevated railroad to the east bank of the river and coming into the Arcade site from the south, making that site a stub terminal. Another is the establishment of the union station on the east bank of the river. The other general proposal is the establishment of a union station on the west side of the river north of First Street in the general portion of the site known as the Plaza area. In connection with the Alameda Street traffic, the diversion of the Salt Lake trains to Alameda Street and the diversion of a large portion of freight movements on the Southern Pacific from Alameda Street, a portion of one of the plans has been actually put into effect, namely, the bringing of two of these carriers into one facility, and the Santa Fe operating with a separate facility. But this temporary arrangement, of course, so far, in the way it has been effected, has resulted in a still further interference on Alameda Street as a whole (Tr. 3200, 3201, 3202).

Thereupon there was offered and admitted in evidence California Railroad Commission Exhibit No. 24, being entitled: "Comparison of Scheduled and Actual Through Passenger Train Movements in and out of Los Angeles," which is in the following form (Tr. 3202):

Case 970

COMMISSION'S EXHIBIT No. 24

California Railroad Commission, Engineering Department, Transportation Division

Comparison of Scheduled and Actual Through Passenger Train Movements In and Out of Los Angeles

Arriving Trains

Year	Southern Pacific			Santa Fe			Union Pacific			
	Regular trains	Extra trains & addit. sections	Total	Regular trains	Extra trains & addit. sections	Total	Regular trains	Extra trains & addit. sections	Total	Total all trains
1914	5,147	148	5,295	3,343	141	3,484	1,077	4	1,081	9,860
1915	5,901	617	6,518	4,354	938	5,292	1,095	78	1,173	12,983
1916	6,051	110	6,161	4,247	291	4,538	1,079	15	1,094	11,793
1917	6,200	272	6,472	4,109	374	4,483	1,078	36	1,114	12,069
1918	5,779	216	5,995	3,567	273	3,840	878	0	878	10,713
1919	5,194	499	5,693	3,261	279	3,540	721	126	847	10,080
1920	5,426	936	6,362	3,694	470	4,164	973	248	1,221	11,747
1921	6,230	110	6,340	3,752	204	3,956	1,094	47	1,141	11,437
1922	5,837	268	6,105	3,604	328	3,932	1,095	53	1,148	11,185
1923	6,235	424	6,659	3,633	523	4,156	1,095	129	1,224	12,039
1924	6,337	228	6,565	3,651	484	4,135	1,098	155	1,253	11,953
1925	6,570	202	6,772	3,634	497	4,131	1,095	178	1,273	12,176

COMMISSION'S EXHIBIT No. 24—Continued

Departing Trains

Year	Southern Pacific			Santa Fe			Union Pacific			
	Regular trains	Extra trains & addit. sections	Total	Regular trains	Extra trains & addit. sections	Total	Regular trains	Extra trains & addit. sections	Total	Total all trains
1914	5,259	66	5,325	3,371	92	3,463	1,077	5	1,082	9,870
1915	5,900	666	6,566	4,380	827	5,207	1,095	32	1,127	12,900
1916	6,035	141	6,176	4,238	253	4,491	1,082	15	1,097	11,764
1917	6,202	302	6,504	4,218	348	4,566	1,088	7	1,095	12,165
1918	5,779	204	5,983	3,590	277	3,867	879	0	879	10,729
1919	5,196	524	5,720	3,250	237	3,487	720	63	783	9,990
1920	5,428	983	6,411	3,705	417	4,122	974	237	1,211	11,744
1921	6,230	124	6,354	3,776	234	4,010	1,093	39	1,132	11,496
1922	5,837	266	6,103	3,618	348	3,966	1,095	66	1,161	11,230
1923	6,236	431	6,667	3,648	506	4,154	1,095	101	1,196	12,017
1924	6,336	250	6,586	3,659	506	4,165	1,098	145	1,243	11,994
1925	6,570	203	6,773	3,648	535	4,183	1,095	150	1,245	12,201

P. A. N.
Feb., 1926.
(6.)

[fol. 404] Thereupon there was offered and admitted in evidence California Railroad Commission Exhibit No. 25, being entitled: "Passengers Handled by Steam Railroads in and out of Los Angeles for Typical Week 1926," which is in the following form (Tr. 3203):

Case 970

COMMISSION'S EXHIBIT No. 25

California Railroad Commission, Engineering Department, Transportation Division

Passengers Handled by Steam Railroads in and Out of Los Angeles for Typical Week, 1926

	Southern Pacific Company			Santa Fe			Salt Lake		
Jan., 1926	Arrive	Depart	Total	Arrive	Depart	Total	Arrive	Depart	Total
17, Sunday	2,217	1,936	4,153	1,489	1,152	2,641	388	240	628
18, Monday	1,886	1,578	3,464	1,420	913	2,333	583	251	834
19, Tuesday	1,694	1,488	3,182	1,015	845	1,860	289	195	484
20, Wednesday	1,741	1,456	3,197	1,135	837	1,972	310	268	578
21, Thursday	1,710	1,587	3,297	1,034	904	1,938	245	177	422
22, Friday	1,826	1,549	3,375	1,271	894	2,165	327	197	524
23, Saturday	1,923	1,587	3,510	1,296	781	2,077	347	207	554
Total, 7 days	12,997	11,181	24,178	8,660	6,326	14,986	2,489	1,535	4,024
Average 1 Day	1,857	1,597	3,458	1,237	904	2,141	356	229	585
Maximum Day	2,217	1,936	4,153	1,489	1,152	2,641	583	268	834
Total per year based on above	677,804	581,412	1,257,256	450,320	328,952	774,592	129,428	79,820	209,248

P. A. N.
(7).
2-17-23.

[fol. 405] Thereupon there was offered and admitted in evidence California Railroad Commission Exhibit No. 26, being entitled: "Comparison of Passengers Handled by Steam Railroads in and out of Los Angeles for Typical Week in Years 1918, 1923 and 1926", which is in the following form (Tr. 3204):

Case 970

COMMISSION'S EXHIBIT No. 26.

California Railroad Commission, Engineering Department, Transportation Division

Comparison of Passengers Handled by Steam Railroads in and Out of Los Angeles for Typical Week in Years 1918, 1923, and 1926

Day	Total all steam railroads, 1918	Total all steam railroads, 1923	Total all steam railroads, 1926	Per cent increase 1926 over 1918
Sunday	8,056	10,251	7,422	8*
Monday	7,454	9,449	6,681	11*
Tuesday	7,114	10,106	5,526	22*
Wednesday	6,733	9,783	5,747	15*
Thursday	6,557	9,982	5,657	14*
Friday	6,696	10,038	6,064	9*
Saturday	7,839	10,842	6,141	22*
Total—7 days	50,449	70,451	43,188	14*
Average—1 Day	7,213	10,066	6,170	14*
Maximum Day	8,056	10,842	7,422	8*
Total per year based on above	2,625,428	3,663,452	2,245,776	14*

* Decrease.

Per cent of Total on Each Railroad

Southern Pacific	52	52	56
Santa Fe	38	36	35
Salt Lake	10	12	9
Total	100	100	100

P.A.N.
February, 1926.
(7-a.)

[fol. 406] Exhibit 24 shows the actual number of passenger trains operating for distances of 100 miles or more

from Los Angeles. That is my definition of the word "through train" as used in that exhibit. 1915 was the peak year. This was due probably to the Exposition being held in San Francisco and San Diego in that year, and that a large number of tourists came to California for these Expositions. Two years later, in 1917, there was another heavy movement, due probably to the flourishing business conditions due to the War. In more recent years there has been a gradual tendency to increase beginning with 1918. In my opinion this increase will continue in a moderate rate about as established by this trend from 1918 to 1925 (Tr. 3202-3203).

Thereupon there was offered and admitted in evidence California Railroad Commission Exhibit No. 27, being entitled: "Comparison of Annual ticket sales in Los Angeles", which is in the following form:

Case 970

COMMISSION'S EXHIBIT No. 27

California Railroad Commission, Engineering Department, Transportation Division

Comparison of Annual Ticket Sales in Los Angeles

	1917	1922	1925	1925 in per cent of 1917
Local sales:				
Southern Pacific	338,820	254,437	219,402	.65
Santa Fe	170,107	149,416	121,771	.71
Salt Lake	61,679	22,987	15,425	.24
Total	570,606	426,840	356,598	.63
Interline sales:				
Southern Pacific	52,408	50,107	60,579	1.15
Santa Fe	52,352	58,383	79,660	1.52
Salt Lake	21,516	27,159	36,461	1.69
Total	126,276	135,649	176,700	1.40
Combined sales:				
Southern Pacific	391,228	304,544	279,981	.72
Santa Fe	222,459	207,799	201,431	.90
Salt Lake	83,195	50,146	51,886	.62
Total	696,882	562,489	533,298	.77

EFM.
February, 1926.
(7-c.)

[fol. 407] The last column of Exhibit 27 is headed wrong. It should be corrected to "The ratio of 1925 to 1917" the decimal point should be placed after the figures. This shows a substantial decrease in the local sales of these carriers. That, of course, is to be expected in view of the fact that very substantial decreases have been made in a strictly local train service of these companies. The interline ticket sales in all cases show a marked increase, averaging 40 per cent. Practically all of these sales represent long distance travel and these increases are more nearly representative of the growth of the actual passenger movements than any other figures available (Tr. 3205-3206).

Exhibit 27, in my opinion, is not a conclusive measure of the growth or fluctuation of passenger travel because the exhibit does not include any passengers who purchased their tickets in other locations. In the event more passengers come to Los Angeles than leave, they would not be reflected in these figures. Nor does it include any round trip sales sold outside of Los Angeles at periods or seasons in which carriers would make a drive in the east to encourage tourist travel by favorable round trip rates, the travel would be very substantially increased without showing any difference in these figures by reported sales in Los Angeles (Tr. 3206-3207).

Thereupon there was offered and admitted in evidence California Railroad Commission Exhibit No. 28, being entitled "Statement showing Normal and Maximum Number of Passengers handled in and out of Los Angeles for a Period of Sixty Minutes January, 1926," which is in the following form (Tr. 3207):

COMMISSION'S EXHIBIT 28

California Railroad Commission, Engineering Department, Transportation Division.

Statement Showing Normal and Maximum Number of Passengers Handled in and out of Los Angeles for a Period of Sixty Minutes, January, 1926

Company	Normal day	Maximum day
Southern Pacific Co.	847	973
Santa Fe	482	560
Salt Lake	179	304
Total	1,508	1,837

P. A. N.
February, 1926.
(7-b.)

Since the first decision of the Commission in these proceedings, certain changes have taken place in the situation along the Los Angeles River in respect to the construction of viaducts.

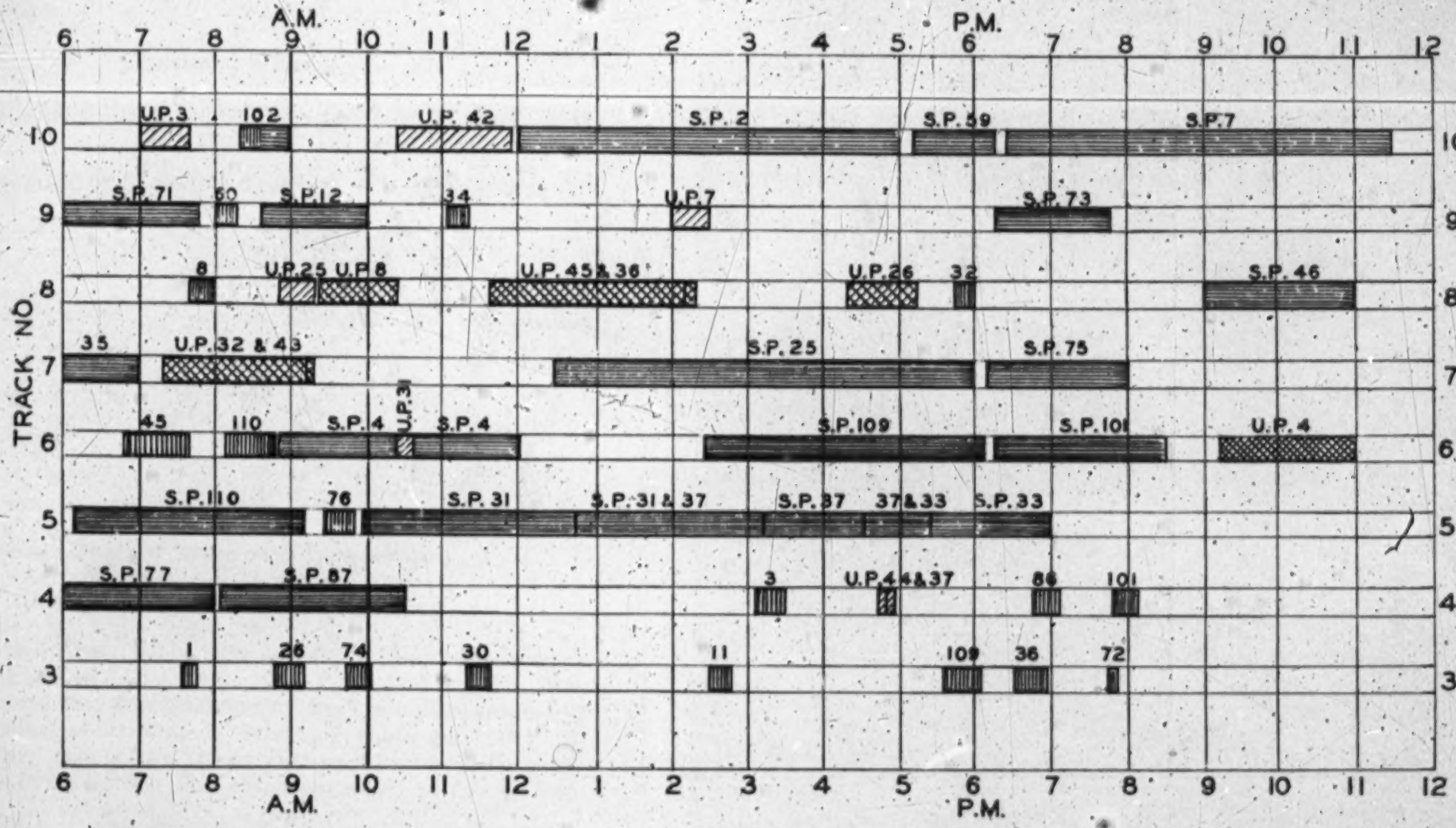
On January 7, 1924, a joint application was filed with the Commission wherein the County of Los Angeles, City of Los Angeles, The Atchison, Topeka and Santa Fe Railway Company, Los Angeles & Salt Lake Railroad Company, Pacific Electric Railway Company and the Los Angeles Railway Corporation asked the Commission to authorize the construction of viaducts across the Los Angeles River and the railroad tracks on each side of the river at Macy Street, Alisc Street, First Street, Fourth Street, Seventh Street and Ninth Street, respectively. The petition also asked that the Commission apportion the costs of these viaducts between the parties. Hearings were held in February and March, 1924, which were largely confined to the consideration of the Ninth Street viaduct and the Commission approved the plans for this viaduct. Later, in July, 1924, the Commission approved the plan for the Macy Street viaduct, in so far as it related to the main railway span and the east

[fol. 409] approach. In February, 1926, the Commission, by its Decision 16029, approved the plan for the Seventh Street viaduct and apportioned the cost of construction among the parties. The next move would be for the applicants to file plans for one of the other proposed viaducts (Tr. 3177-3180).

I have made a study of the adequacy of the present Southern Pacific Arcade Station, which station was constructed in 1914. The main concourse is a fireproof structure. The wings on both ends are Class C frame construction with brick wall. The station tracks are located in pairs on each side of the concrete platforms, over which are umbrella sheds. The tracks are reached from the station by means of a subway extending from the waiting room down a ramp under the tracks, and reached by ramps leading to the platforms. On page 240 of Exhibit 1 of the California Railroad Commission there is given the Southern Pacific record of cost of the Arcade Station facilities in the amount of $646,-428.40. The most important additions to these facilities since they were constructed are those which were more in the nature of a rearrangement, due to the entry of the Salt Lake. In connection with that there was expended a total of $12,657, of which $8,879 was chargeable to investment account. However, it is interesting to note that in addition to this $12,000 which was spent in altering the station building itself to provide this temporary use by the Salt Lake, the Salt Lake itself expended something in excess of $120,-000 on its own facilities, track connections, and so forth, incident to this temporary use; thus, the temporary use of the station by the Salt Lake has resulted in a total expenditure by both carriers in excess of 20 per cent of the cost of the station building itself originally (Tr. 3207-3208).

The expenditure of this 20 per cent of the total cost of the station building has not resulted in the taking of the trains off of the streets (Tr. 3209).

Thereupon there was offered and admitted in evidence California Railroad Commission Exhibit No. 30, being entitled: "Occupancy of Station Trackage at Central Station", which is in the following form (Tr. 3215):



CALIFORNIA RAILROAD COMMISSION
ENGINEERING DEPARTMENT
TRANSPORTATION DIVISION
CASE 970
CHART SHOWING
OCCUPANCY OF STATION TRACKAGE
AT CENTRAL STATION
JANUARY, 21, 1926.

CALIFORNIA RAILROAD COMMISSION
EXHIBIT 31

[fol. 410] Case 970

COMMISSION'S EXHIBIT No. 30

California Railroad Commission, Engineering Department, Transportation Division

Occupancy of Station Trackage at Central Station

Track number	Track occupied: Arriving trains Hrs.	Arriving trains Min.	Depart'g trains Hrs.	Depart'g trains Min.	Total Hrs.	Total Min.	Per cent of total time
3	2	21	..	..	2	21	14.7%
4	1	11	4	25	5	36	35.0
5	0	22	12	03	12	25	77.6
6	1	26	9	57	11	23	71.4
7	..	..	9	49	9	49	61.4
8	..	57	6	02	6	59	43.6
9	..	58	4	41	5	39	35.3
10	2	20	10	11	12	31	70.2
All	9	35	57	08	66	43	52.1%

Average length of Track occupancy per train:
Arriving Trains—22.1 minutes.
Departing " —2 hrs, 20.0 minutes.

NOTE.—Above table compiled from Observations made during period 6:00 A. M. to 10:00 P. M. January 21st, 1926. Time shown includes only time track actually occupied by equipment of arriving or departing passenger trains. It does not include time tracks were used by switching movements in connection with either passenger or freight business.

N.A.W.
Feb., 1926.
(8-A.)

Thereupon there was offered and admitted in evidence California Railroad Commission Exhibit 31, being a chart, entitled: "Occupancy of Station Trackage at Central Station", which exhibit is in the following form (Tr. 3215):

(Here follows Commission Exhibit No. 31, side folio 411)

[fol. 412] On Exhibit 31 there is arranged vertically on the chart, running horizontally across the page, sets of parallel lines which represent the physical trackage, station trackage, at the Arcade Station. There is arranged vertical lines across the page at intervals representing the hours of the day from 6 a. m. to midnight. If a train leaves horizontal lines which represent an individual track, there is plotted by appropriate legends that portion of the hours of the day in which that particular track was occupied, and above the legend in each case is shown the number of the train which so occupied it. The legend is changed between arriving and departing trains. Exhibit 31 shows all the tracks of the station except Tracks 1 and 2. The tracks are numbered at the Arcade Station beginning No. 1 immediately east of the building. Thus the first through track is numbered one; the second numbered two, and so on. Tracks No. 1 and 2 in the sense of being station tracks for the arriving and departing of trains, just do not exist. They are used for head end cars.

There are not sufficient express and mail trackage facilities at the station, so although these numbers nominally run to 10, it is not a fact in so far as the arrival and departure of trains is concerned (Tr. 3215-3216).

It is necessary that the carriers use tracks 1 and 2 for head end business unless other tracks are provided and I don't see where they would be able to provide other tracks for that head end business in adequate amounts (Tr. 3217).

It is apparent from Exhibit 31 that there is a relatively small portion of the day when there is what you call a surplus of capacity in these station tracks at present. During the peak hours from 8 to 10 in the morning the situation is already approaching congestion. There is no doubt in my mind that some additional capacity is possible by increasing the efficiency of the make up and break-up of trains. It is further probable that some of the congestion that [fol. 413] exists at this station is due to inadequate facilities at the coach yard. Based upon these studies I am of the opinion that for peak periods there is now no substantial margin of station track capacity at the Arcade Station, and that even with the additional two tracks that is proposed there will not be provided an adequate capacity to take care of the joint operations of the Southern Pacific

and the Salt Lake for a period of more than fifteen years. In making this estimate of fifteen years I am assuming that every possible operating efficiency will be taken advantage of. In my opinion there is no room at present for the Santa Fe in the Arcade Station, under present trackage and with the two additional tracks it would be inadequate right now for peak periods. There is no additional area in this particular site upon which I can see that additional tracks can be provided in any convenient way (Tr. 3219, 3221).

Referring now to the subject of station building adequacy of the Arcade Station. Theoretically, it is calculated that there should be about 9 square feet of waiting room space for each passenger handled during the rush hour period on normal days. That is a recommendation contained in the American Railroad Engineering Bulletin No. 24, issued in 1923. This theoretical requirement compares with the actual figure of 9.2 square feet per passenger handled at the present time at the Arcade Station. Frequent observation on my part indicates that there is a very definite tendency toward overcrowding the waiting room at this station between the hours of 7 and 8 p. m., just prior to the departure of such important trains as the Padre, Lark and Sunset Limited, and I am thoroughly convinced that, entirely aside from a theoretical consideration of station waiting room capacities, the present waiting room at the Arcade Station will prove to be entirely inadequate for the combined operations of the Southern Pacific and the Salt Lake for peak periods of travel within ten years. (Tr. 3221-3222, March 3, 1926) I do not see how the waiting room capacity at the Arcade Station could be in- [fol. 414] creased except at a very large expense and at the sacrifice of necessary space for other incidental station facilities, such as baggage room and mail handling facilities, etc. (Tr. 3222, March 3, 1926).

Thereupon there was offered and admitted in evidence California Railroad Commission Exhibit No. 32, being entitled, "Proportions of Use of Various Methods of Transportation to and from Steam Railroad Stations", which is in the following form (Tr. 3224):

Case 970

COMMISSION'S EXHIBIT No. 32

California Railroad Commission, Engineering Department, Transportation Division

Proportions of Use of Various Methods of Transportation to and from Steam Railroad Stations

Method of Transportation	Central station		Santa Fe station		Total	Per cent of Total
	To station	From station	To station	From station		
Pacific Electric Interurban Cars.	120	....	....	....	120	1.6%
Pacific Electric Street Cars.....	641	....	....	....	641	8.4
Los Angeles Railway Street Cars	932	760	749	996	3,437	45.1
Southern Pacific-Santa Fe Station Transfer Bus.....	80	36	36	80	116	1.5
Taxicabs	497	508	212	193	1,410	18.5
Private Automobiles	612	413	412	380	1,817	23.8
Hotel Busses	37	29	20	....	86	1.1
Total	2,539	2,126	1,429	1,649	7,627	100%
Total Passengers Arriving Los Angeles	....	2,051	....	1,135	3,186	55.4
Total Passengers Leaving Los Angeles	1,724	....	837	....	2,561	44.6
Total Passengers Handled On Steam Trains	....	....	....	....	5,747	100%

A. G. M.
February, 1926.
(9.)

[fol. 415] Thereupon there was offered and admitted in evidence California Railroad Commission Exhibit No. 38, being entitled: "Comparison of Population in Zones Closer by Travel Time to the Respective Station Sites", which exhibit is in the following form (Tr. 3245):

COMMISSION'S EXHIBIT No. 38

California Railroad Commission, Engineering Department, Transportation Division

Comparison of Population in Zones Closer by Travel Time to the Respective Station Sites

Description	Daum plan		Railroad plan		Plaza plan	
	Population served	Per cent	Population served	Per cent	Population served	Per cent
Comparison each plan with each other plan:						
Street Car Traffic	.....	..	204,000	18	921,000	82
Street Car Traffic	211,000	19	.....	..	914,000	81
Street Car Traffic	140,000	12	985,000	88	.....	..
Vehicular Traffic	.....	..	505,000	45	620,000	55
Vehicular Traffic	436,000	39	.....	..	689,000	61
Vehicular Traffic	366,000	33	759,000	67	.....	..

P. E. D.
February, 1926.
(10.)

[fol. 416] The union passenger terminal should be located conveniently in contact with all the systems of local transportation. By that I mean adequate highway access, adequate street car access, and adequate rapid transit access. The City of Los Angeles has reached a population in excess of one million. That is a population at which the cities in the history of this country have found it necessary to really, in a serious way, undertake the actual construction of a real rapid transit system (Tr. 3328).

It seems to me that the terminal facilities which must be provided at an early date should be so located that they will be in convenient contact, not only with the local street cars and the major highways, but also the ultimate primary major axes of the rapid transit system. The Plaza area is the only section in Los Angeles which is capable of meeting the requirements that I have indicated for any reasonable expenditure of money, or with any reasonable regard for the operating facilities and convenience of the trunk line railroads themselves (Tr. 3333).

It is my conception of this entire problem that the issue here presented is not fundamentally a question of whether there should be a union station or not in Los Angeles, but it is a question of how shall adequate steam railroad passenger facilities be provided. All concerned apparently admit that the present facilities for steam railroad carriers are satisfactory, and that corrective measures must be applied. In applying these corrective measures the real issue to be met is that of determining a plan of providing adequate passenger terminal facilities that will best meet these tests, first, adequacy for a large number of years; second, accessibility and convenience to the public; third, convenience and economy of operation of the steam railroads themselves; and fourth, economy of construction. In considering all of these tests as a whole and in putting any one as the controlling test, I personally am convinced that the construction of a union station in that portion of [fol. 417] the City of Los Angeles designated as the Plaza area is the best of any of the plans that have so far been presented (Tr. 3333-3334, March 4, 1926).

E. P. McAULIFFE was recalled and cross-examined.

Thereupon there was offered and admitted in evidence California Railroad Commission Exhibit No. 49, being a map of Hill Station lands appraised by Witness McAuliffe and adjacent lands, which exhibit is certified separately and transmitted as an original exhibit (Tr. 3339).

Exhibit 49 was prepared by me and shows generally the property involved in my appraisal of the Plaza property (Tr. 3337). Zone 4 on Exhibit 49 is a large parcel of land consisting of 25.66 acres between Alameda Street, Aliso Street, Lyon Street and Ramirez Street, with the exception of the Southern Pacific team yards. The appraised value of this land is $1,395,891 (Tr. 3344). The so-called Hanchett properties consist of those previously designated as Zone 4 of about 25½ acres, shown on Exhibit 49 tinted in red and outlined in green, and the balance of the property on Exhibit 49 indicated in green tinting extending to the Los Angeles River. The total area of those Hanchett properties is 38.8 acres approximately. Those properties were acquired from 1912 to 1918 by the Industrial Terminal Railway Company and the Industrial Land and Development Company at a cost of approximately $2,200,000. That cost, in my opinion, was high, and in many cases included incidental costs, naturally the costs of the improvements on the property, payments to cancel existing leases on the properties, and very high prices paid by the Industrial Development and Land Company, who were compelled to pay the asking prices as they did not have the power to condemn (Tr. 3350-51).

It is my understanding that these properties just described were acquired in 1924 by the El Paso and Southwestern Railway for $6,250,000. The property, I understand, has been transferred to the Southern Pacific Company in the purchase by that Company of the El Paso and Southwestern System. I have been told by the Southern [fol. 418] Pacific, and it also appears in the annual reports of that company that it acquired the properties at the same price as paid by the El Paso and Southwestern, or $6,250,000. That price does not represent a fair test or standard to be applied in determining the market value

of the said lands for the reason that I do not consider that the sale was made at the market value. All properties sold in the last three or four years in that district indicate a much lower value. The cost of the properties between 1912 and 1918, approximately $2,200,000, or practically one-third of the purported sale price, was a high cost as of that date. Property in that vicinity has not increased materially in value since the property was purchased. It is my understanding that the property had a special strategic value to the El Paso and Southwestern Railway Company, and that they were compelled to pay, and did pay, very much more than the property was worth. I believe the El Paso acquired the property so that they could get a higher price for their whole system from the Southern Pacific (Tr. 3352-3353).

The 38.8 acres extending from Alameda Street to the River cost $2,221,995. The block designated as Zone 4 between Alameda Street, Aliso Street, Lyon Street, Ramirez Street and Macy Street, with the exception of the Southern Pacific team yards, cost over the period from 1912 to 1917, including all incidental costs, $1,671,386 (Tr. 3357).

RICHARD SACHSE, recalled as witness on behalf of the City of Los Angeles, testified as follows:

Under instructions given by the Commission in 1917 I, as its chief engineer, made an investigation and study of the grade crossing problems in Los Angeles together with the freight facilities and the question of passenger facilities.

The conclusion was reached that the grade crossing elimination was the most important, and in a way the controlling problem of the whole situation, and therefore this was given [fol. 419] first place. The grade crossings were divided into two groups, river crossings, and the Alameda Street situation, and it was considered that there should be elimination of all important grade crossings on the river banks by means of depression of the tracks and elevation of the streets and the construction of viaducts across the river and across the railroad tracks. The plans and designs were in general adopted by the city and are now being followed (Tr. 3385-3387).

The conclusion as to the Alameda Street situation was that it was intolerable and to the greatest possible extent steam traffic must be eliminated because it did not seem practicable to us to eliminate the tracks entirely. This problem was so very clearly tied up with passenger station situation that as far as Alameda Street is concerned, the two are inseparable. They are inseparable for the reason that the Southern Pacific passenger station is located on Alameda Street, and all passenger trains that are using that station and have used it, are using Alameda Street north of the station for the trains coming in northerly and going out northerly and south of the station coming in and out southerly. It was further involved because the Union Pacific, under the railroad plan, intended to make use of the Arcade Station located on Alameda Street. It was further involved because the location of any proposed union station recognized that it either should be so located that the passenger trains would not use Alameda Street at all, or, in so far as the Arcade Station was considered as a part of the union station, that any of the trains using this union station would also not use Alameda Street (Tr. 3388-3389). The recommendation that Commission's engineering department made was that all passenger railroad traffic and through freight traffic should be eliminated from Alameda Street so that there would be left only certain switching service which should be conducted at night. No feasible plan for meeting the Alameda Street situation has ever been presented which did not involve the construction of a union passenger station (Tr. 3389).

[fol. 420] It seems to me, however, that the question of whether there should be a union station anywhere in any important city will depend on these integral factors (Tr. 3397).

A. The factor of convenience and necessity to the traveling public and whether they are better served as a whole by a union station than by a number of separate stations.

B. The factors of cost to the public as well as to the railroads; both capital cost and operating costs. That is, whether the total burden that has to be paid by the ratepayer will be greater or less by the establishment of a union station.

C. The convenience from an operating standpoint of the railroads and the auxiliary operations connected with passenger service.

D. The best interests of the community as a whole, having in mind desirability of reducing, to the necessary minimum of expense, necessary city areas required for steam railroad operation; also the desirability of enabling possible additional carriers to reach the city in an efficient, convenient and inexpensive way, if this should be required. Also, the factor that it is very much in the interest of a growing and important city to have a railroad entrance in keeping with the size and importance of the city.

E. The topographical condition of the city and the existing locations and facilities of the railroad must make it possible to establish a union station that will at a reasonable cost meet the requirements of such facilities (Tr. 3398-3399).

In Los Angeles the situation is ideal for the creation of a union station. The specific facts that apply to Los Angeles I have sumarized, although they are stated in greater detail in Railroad Commission Exhibit No. 1. My summary is this: First, all of the three railroads are under the necessity, either immediately or in the near future, of making extensive improvements in passenger facilities. The Santa Fe is on record as admitting the immediate necessity of building new and adequate passenger station facilities. It is [fol. 421] certain that these will cost in excess of $1,000,000. The utterly inadequate and inefficient and badly located passenger station of the Union Pacific was recently damaged by fire and has not been repaired or rebuilt, and this important railroad now uses, under a temporary permit, the Southern Pacific Arcade passenger station. An inspection of the latter station any day of the year in peak traffic hours will establish the fact that it either has actually reached its capacity or that the capacity will be reached in a very short time, and especially, as far as the convenience to the public is concerned; and if that is to be made, that, of course, means expenditure by both lines (Tr. 3401-3402).

This group of carriers, the Santa Fe on the one side and the S. P.-U. P. on the other, will be much better served at less cost in a properly located union station than by con-

tinuing their separate stations, even after the necessary expense for improvement (Tr. 3403).

I have already stated that the highly important matter of grade crossing elimination on Alameda Street can best be made by the establishment of the union station; therefore, you can bring about grade crossing relief and a union station at one and the same time, and at an almost ridiculously small cost compared to the importance of the improvement (Tr. 3403).

In Los Angeles a union station can be so located as to serve conveniently the greater portion of the public; it can be located efficiently with reference to the local rapid transit and street car lines and with reference to principal streets and the business center as it now exists, and consistent to and in harmony with the civic center plan adopted and now in the course of construction (Tr. 3403).

Some of the important factors have been taken up that must determine what site is to be adopted, if the agreement is that the Union Station is better than two or more separate stations. The adequacy of the site is the most important factor, referring to the future even more than to the present (Tr. 3410).

[fol. 422] Comparison will be made only with the Plaza site and the railroad plan, that is, the Union Pacific-Southern Pacific Arcade site alone, or in combination with the Santa Fe (Tr. 3410).

I testified before the Interstate Commerce Commission and also before this Commission and my opinion has not been changed that the Arcade site is inadequate, certainly for a union station, and also for a joint station as is proposed by the two carriers, being too narrow for the necessary number of station tracks and insufficient room for adequate mail, express and baggage facilities as they will have to be provided for in the near future. Considering the possibilities for expansion present on that site, it is found that it will be a very expensive and very inconvenient proposition to expand the site and not in the interests of the city. It can be done by relocating Alameda Street or by building over or under the street or by doing the same thing on the Central Avenue side. Expansion north and south can be made by closing Fourth Street, or separating grades or elevating station tracks, all of which are

undesirable and attended by expense that is not reflected in the estimates at present before the Commission (Tr. 3411).

As to the Plaza site, there is no question at all as to the adequacy for all reasonable time to come (Tr. 3411).

Turning to the next very important factor of accessibility, Mr. Mott has so clearly and fully brought out the present accessibility and agreement is had with his conclusions. Future accessibility is perhaps even more important. In the quotations made from Mr. Arnold's report, the central location of the Plaza is clearly brought out and it is a fact that some of the most important thoroughfares and some of the most important, either immediately touch, or adjoin the Plaza, and that the important north and south axis which is the controlling axis goes right through the Plaza. A union station is desired located conveniently accessible to the main thoroughfare and at the same time should not be so located that it will interfere with those [fol. 423] thoroughfares to such an extent as to affect their usefulness. The Plaza is now in an adopted portion of the major highway plan for the city (Tr. 3411-3412).

It is to be noted that the proportion of travelers reaching Los Angeles and tran-ferring immediately to another railroad is small. If the construction of the union station had to be justified by the number of transfer passengers, then there would be no justification for a union station. But this, in my opinion, is a very minor factor here and in other places. Most of the travelers who come into the city stop a shorter or a longer period, and while they do not transfer immediately they are through passengers. A considerable number of passengers who travel on separate tickets to and from Los Angeles are also transfer passengers coming back, although they are not counted as such in any traffic analysis. Neither are the steam railroad passengers transferring to the Pacific Electric counted as transfer passengers, which is a small percentage. Together the transfer passengers amount perhaps to something like ten per cent, and a union station would be a real convenience to them. This convenience, of course does not exist under a two station plan. When it comes to the convenience as regards the actual station facilities, the Plaza site permits of a superior design of a station layout than does the Ar-

cade site. A combination of the Arcade and Santa Fe sites under the railroads' plan is less favorable and less desirable than either the Plaza or an improved complete Arcade depot plan (Tr. 3426-3427).

In explanation of the statement that the Arcade site was superior, it was meant that it was superior for the combined facilities of all railroads that the Union Pacific and the Southern Pacific alone, but a union station at the Plaza is more convenient in all respects than a union station at the Arcade (Tr. 3428).

In considering the costs, the most important is the investment cost, which must be supported by the rates. The [fol. 424] last comparison must take into consideration not only the actual new money required, but salvage values which come about from the release of lands now used for passenger service and no longer necessary, and it must take into account the facilities of all the carriers whether they are in separate stations or in a union station, and all the property devoted to the service at the present time, as well as the property that will be devoted in a reasonable future, having in mind always that these new facilities are to be provided for the future even more than for the present (Tr. 3429).

The total cost of passenger facilities under the railroad plan, having in mind the requirements for the future, are larger than the same costs for a union station at the Plaza. I have in mind the Santa Fe expenditures, as well as the Southern Pacific-Union Pacific expenditures. I am not taking into consideration at this time any expenditures that the Pacific Electric may make (Tr. 3430).

When the expenditures are made, there will be a union station that will care for the needs of Los Angeles, as far as the site is concerned, for 50 years or more, while at the Arcade site there is no allowance for expansion (Tr. 3430).

The Southern Pacific now owns most of the land required for the Plaza plan.

The Interstate Commerce Commission in its Decision of July 6, 1925, has taken the sum of $3,855,505 as its estimate of the cost of the station lands under the Plaza plan. If the market value of the lands that have been acquired by the Southern Pacific is subtracted from that sum, the land value will be a relatively minor item. The Interstate Commerce

Commission has estimated that the total investment under the Plaza plan would amount to $9,256,118, and that the similar figure for the carriers' plan will amount to $10,245,219. These figures are shown on page 457 of the Interstate Commerce Commission decision. I am familiar with the detailed items that make up both of these figures, and I [fol. 425] am satisfied that the estimate that the Interstate Commerce Commission has used for the Plaza plan is a liberal estimate, and includes some items that are not properly charge- to passenger facilities. The Interstate Commerce Commission estimate for the Plaza plan is liberal, and the figure represents a very moderate sum for union station facilities for a city the size of Los Angeles (Tr. 3431).

No consideration has been given by Commission's engineer to the use of air rights, but the air rights above the Plaza are a most valuable consideration. In Chicago, the engineers have adopted the principle that the air rights will ultimately pay the cost of the entire investment. The Plaza location is much better for air rights development than any other site (Tr. 3432-3433).

Considering future electrification, the cost of electrification of the Plaza site will be less expensive and will be more likely brought above than any other location (Tr. 3433).

Cross-examination:

The most important of all reasons why a union station should be constructed at the Plaza is to eliminate the steam main line trains from Alameda Street. The other reasons which make it necessary to construct a union station at the Plaza are that the carriers are under the necessity of spending large sums of money for the improvement of passenger facilities aside from the question of Alameda Street, the physical conditions in Los Angeles, the topography, and also the conditions under which the steam railroads operate at present, are practically ideal for the establishment of the union station and a union station would more conveniently and adequately serve the passengers using the steam railroads as well as the general public that have occasion to use these steam railroad passenger depots, and the capital costs and operating costs would be less at a union station

that under separate stations and a union station is a general consonance and fits in better with the city development of the civic plan. The property necessary to the erection of a union station is largely but not entirely railroad prop- [fol. 426] erty. There is a very decided tendency of consolidation of terminals in large cities because the consolidation is recognized as a tremendous factor in railroad operation. These are some but not all of the reasons why I think a union station is desirable for Los Angeles (Tr. 3484-3485).

The present Southern Pacific passenger station and incidental facilities are adequate for the Southern Pacific alone for the present time and for perhaps 20 years in the future. Irrespective of any grade crossing situation, considering the adequacy of the Southern Pacific station for its own use and the necessity of the Salt Lake and Santa Fe of providing themselves with station buildings, a union station at the Plaza would be recommended (Tr. 3485-3486, Mar. 5, '26).

The total investment or value of the facilities devoted to passenger stations in the City of Los Angeles will be less and will become increasingly less under a union station plan than under seperate plans (Tr. 3486).

When I speak of comparative costs I refer to the Railroad Commission plan, the Hill plan, the last plan (Tr. 3487).

No provision has been made in the Hill plan to relieve the Pacific Electric grade crossing situation. The steam passenger problem is a separate matter and the Pacific Electric problem should be settled as well as it may be (Tr. 3490-3491).

The union station should be so located to be easily accessible and conveniently located to the ultimate solution of rapid transit (Tr. 3493).

It is difficult to set a definite limit on cost for union station, but when it was found that the expenditure would be very little if any, more than the immediate expenditure necessary for separate stations, then it became a very powerful factor. When further comparison was made of the total investment, and it was found that the union station could be built for actually less money that the separate facilities, at the same time providing a plan which would take

[fol. 427] care of the ultimate needs, then the question of relative expenditures *were* settled (Tr. 3495-3496).

An expenditure of about $10,000,000 or even $12,000,000 for the aggregate of station facilities in the City of Los Angeles, would be a very moderate investment and much less than for similar facilities in any city of the same size (Tr. 3497).

A. G. Mott recalled.

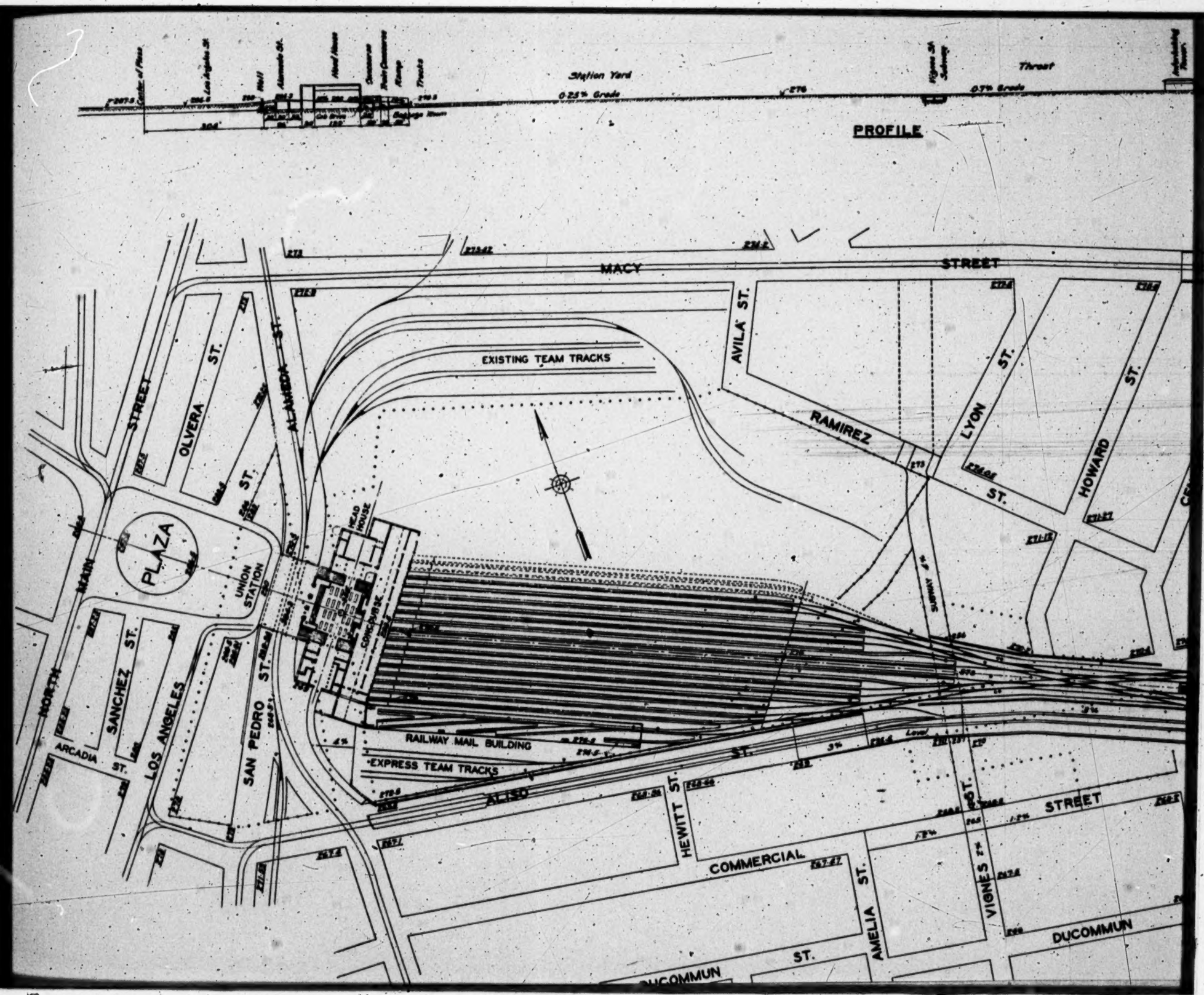
Cross-examination:

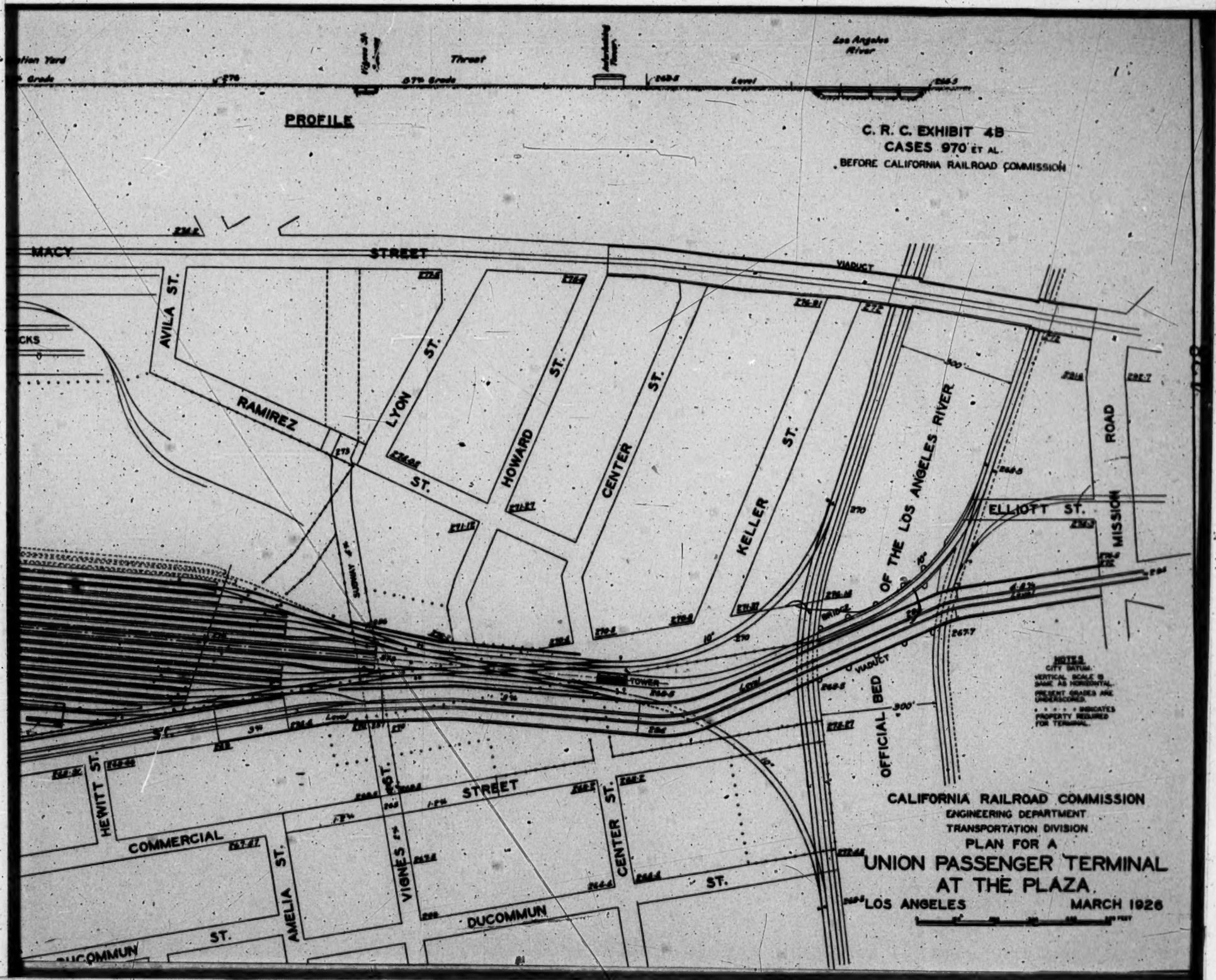
With the completion of the program for the construction of viaducts across the Los Angeles River, to which I testified, I think you will have caught up with the present condition as to the grade crossing situation so far as the tracks of the Salt Lake Company are concerned on the east bank of the River. I think something will have to be done in the future in the way of viaducts at Washington Street and maybe at Sixth Street. I think the program which I have heretofore outlined, and which is now in progress of being carried out, will take care of the situation if the Salt Lake Company continues to run its trains wholly on the east bank of the river (Tr. 3635-3637). It is my conclusion and my opinion that so far as the carriers' plan is concerned, as compared with the proposed Plaza plan, that the costs of operation are so nearly equal that this should not be taken as an important factor in reaching a determination of the problem (Tr. 3644, May 18, 1926).

George S. Hill, recalled as a witness on behalf of the Railroad Commission, testified as follows:

The plan shown on Railroad Commission Exhibit No. 4 was developed by me for the purpose of a case that was pending between the City of Los Angeles and certain railroads in 1924 before the Interstate Commerce Commission (I. C. C. Case 14778) (Tr. 3669).

I have made a final plan for the Plaza station layout which differs from previous exhibits in that the curve has been flattened to 10 degrees. Thereupon there was offered and


PROFILE
Station Yard
0.25% Grade
0.7% Grade
MACY STREET
EXISTING TEAM TRACKS
AVILA ST.
RAMIREZ ST.
LYON ST.
HOWARD ST.
OLVERA ST.
ALAMEDA ST.
MAIN STREET
PLAZA
UNION STATION
HEAD HOUSE
CONCOURSE
NORTH MAIN
SANCHEZ ST.
ARCADIA ST.
LOS ANGELES
SAN PEDRO ST.
RAILWAY MAIL BUILDING
EXPRESS TEAM TRACKS
ALISO ST.
HEWITT ST.
COMMERCIAL STREET
AMELIA ST.
VIGNES ST.
DUCOMMUN ST.
SUBWAY


PROFILE
C. R. C. EXHIBIT 4B
CASES 970 ET AL.
BEFORE CALIFORNIA RAILROAD COMMISSION
MACY STREET
AVILA ST.
RAMIREZ ST.
LYON ST.
HOWARD ST.
CENTER ST.
KELLER ST.
VIADUCT
OF THE LOS ANGELES RIVER
ELLIOTT ST.
MISSION ROAD
SUBWAY
TOWER
OFFICIAL BED
HEWITT ST.
COMMERCIAL STREET
AMELIA ST.
VIGNES ST.
CENTER ST.
DUCOMMUN ST.
NOTES
CITY DATUM
VERTICAL SCALE IS SAME AS HORIZONTAL
PRESENT GRADES ARE UNDERSCORED
INDICATES PROPERTY REQUIRED FOR TERMINAL
CALIFORNIA RAILROAD COMMISSION
ENGINEERING DEPARTMENT
TRANSPORTATION DIVISION
PLAN FOR A
UNION PASSENGER TERMINAL
AT THE PLAZA
LOS ANGELES
MARCH 1926

admitted in evidence California Railroad Commission Exhibit No. 4-B being entitled "A plat marked Plan for Union Passenger Terminal at Los Angeles March 1926", which exhibit is in the following form (Tr. 3698).

(Here follows Commission Exhibit No. 4-B, side folio 428)

[fol. 429] Exhibit 4-B is not materially different from the previous plan, Exhibit 4, except that it is developed a little more in some of its details. The head house is the same size, although I have shown the concourse extended somewhat at the ends, because I found it was not necessary to have the station the full 60 feet in height, and therefore, additional area could be provided for the same curvature. The station is made to face the Plaza more directly, that is parallel with Main Street. Otherwise, it is very similar (Tr. 3700).

Exhibit 4-B is the last edition of Exhibit 4 (Tr. 3701).

I presented Exhibit 4-B to illustrate some of the details of the plan shown on Exhibit 4. I made an estimate to determine whether the plan shown on Exhibit 4-B would cost more or less than the plan shown on Exhibit 4. They are the same plan, and the cost is the same, except, as I say, with possibly the addition of that little parcel of land on Howard and Aliso Streets, and the alternative of the Vignes Street Subway. There is no extra construction involved (Tr. 3758).

The plan for the station building and track lay out has not been changed and the cost estimates have not been changed (Tr. 3759).

Thereupon there was offered and admitted in evidence California Railroad Commission Exhibit No. 52, entitled: "Estimated Areas of Union Passenger Station Facilities, Plaza Plan of March, 1926", which is in the following form (Tr. 3753):

[fol. 430] Case 970

COMMISSION'S EXHIBIT No. 52, MAY 19, 1926

California Railroad Commission, Engineering Department, Transportation Division

Estimated Areas of Union Passenger Station Facilities, Plaza Plan of March, 1926

	Areas, in sq. ft.
Head house (Plaza level):	
Waiting Room	15,400
Ticket Lobbys	4,400
Restaurant Lobby	1,900
Ticket Office	2,370
Telephone and Telegraph	1,000
Women Rest Room	1,650
Women's Toilet	1,380
Restaurant	5,840
Lunch Room	2,100
Kitchen	2,400
News Stand	400
Parcel Checkroom	1,500
Invalid Room	400
Travelers Aid	400
Walls ramps Halls, etc.	13,260
Total	54,400
Head house (3rd floor wings):	
Division Offices	12,250
[fol. 431] Head house (Alameda St. Level):	
Men's Smoking Room	1,200
Barber Shop	640
Men's Toilets	1,330
Division Offices	14,000
Power & Heating Plant	5,500
Agent's Office	650
Walls & Stairways, etc.	6,500
Unassigned Spare Space	24,580
	54,400

	Areas, in sq. ft.
Passenger concourse (includes 3,900 sq. ft. in baggage checking room)	26,375
Baggage room under passenger and train concourse:	
Baggage and Cab Drive	15,000
Baggage Room	20,375
	35,375

[fol. 432] GORDON WHITNALL was called as a witness on behalf of the City of Los Angeles and, having been duly sworn, testified as follows:

I am City Planning Director-Manager of the Board of City Planning Commissioners of the City of Los Angeles. This is an official board established by the City Charter of the City of Los Angeles. I have been connected with the City Planning Commission since 1920, and have worked upon city planning matters since 1913. I have studied and read various leading works on the subject of city planning. The City Planning Commission in 1921 undertook the preparation of a highway plan, the purpose of which was to co-ordinate the existing street system into a major highway system plan. The program contemplated the employment of existing streets where, because of direction or of width, they lent themselves well to a complete framework of major streets; and the recommendation of certain connections, sometimes widenings and in other cases straightenings to complete that otherwise incomplete system (Tr. 3905-3906). There resulted from these studies incident to that work a major street plan which was submitted to the City Council with recommendations that it be adopted as a guide in matters of passing upon all questions pertaining to streets, such as privately initiated improvement projects, control over new subdivisions where they might be found to be located within the City, and similar matters coming under the jurisdiction of either the City Planning Commission, City Council or City Engineer. That plan was adopted as a pattern that would be followed.

Thereupon there was offered and admitted in evidence City of Los Angeles' Exhibit No. 13, being a map entitled: "Major Traffic Street Plan, Los Angeles, California", which is certified separately and transmitted as an original exhibit (Tr. 3909).

City of Los Angeles Exhibit No. 13 was a part of the report of the City Planning Commission to which I referred (Tr. 3909).

Thereupon there was offered and admitted in evidence City of Los Angeles Exhibit No. 14, being a map entitled: [fol. 433] "Existing Major Thoroughfares Serving Administrative Center Site", which is certified separately and transmitted as an original exhibit (Tr. 3912).

The Plaza is located on the map, Exhibit 14, at the spot represented by a little circle in the upper right hand corner of the quadrangle marked as the administrative or civic center site (Tr. 3912).

The area represented as lying between New and straightened Spring Street and the present Main Street, and bounded on the north by present Temple Street and on the South by First Street has already been acquired, and is the site upon which there is now being constructed a foundation for the new city hall (Tr. 3915).

Thereupon there was offered and admitted in evidence City of Los Angeles Exhibit No. 15, being a map entitled: "Administrative Center District and Adjoining Areas showing Certain Land Ownerships", which is certified separately and transmitted as an original exhibit (Tr. 3916).

The ownership of certain property by the railroads, City of Los Angeles, County of Los Angeles and Federal Government are shown as indicated on the legend of City of Los Angeles Exhibit 15 (Tr. 3916-17).

In the preparation of City of Los Angeles Exhibit 15, the information so far as the city property is concerned was secured from the files of the City Clerk and the State Controller. The county information, I got from the county records. The railroad information was obtained from the county records and from other records of the Board of Public Utilities and Transportation (Tr. 3919).

Thereupon there was offered and admitted in evidence City of Los Angeles Exhibit No. 16, being a map entitled: "Metropolitan Mosaic Greater Los Angeles", which is certified separately and transmitted as an original exhibit (Tr. 3920).

The purpose of preparing City of Los Angeles Exhibit 16 was to show that from a territorial standpoint the Plaza is almost the exact center of the metropolitan area. The map was originally prepared in connection with our discussions on the location of the administrative or civic [fol. 434] center for the reason that many people held that such a center should be located in a geographical center of the territory to be served, and also if possible in the center of population. By the studies we made we found that it was a coincidence that the Plaza, being approximately the geographical center of the Metropolitan district, happened also, according to registration figures, to be almost the exact center of population of that same district (Tr. 3921).

The voters of the City of Los Angeles have already authorized $7,500,000 of bonds for the construction of the city hall and its site in the civic center. In connection with the voting of bonds there was submitted a general proposition as to where the administrative civic center should be located. The result of the vote by a very substantial margin was to locate it where we are now actually constructing it, namely, south of Sunset, north of First and from about Los Angeles Street to Hill Street (Tr. 3929).

Exhibit 15 shows the location of public buildings already constructed in the civic center area. On the quadrangle framed by Spring Street on the west, Main on the east, Temple on the North, and First on the south is the site on which there is now being erected the new city hall. The exact location of the building is a site occupying approximately the northerly three-fourths of that quadrangle. Immediately across to the west from the city hall site, and located just south of Temple Street, is the court house building. Adjoining the court house on that portion of the property indicated as belonging to the county, shown as a diagonal parcel of land is now located the hall of records. Right across Temple Street at the northeast corner of Broadway and Temple is located the new hall of justice,

reported to have cost between six and seven million dollars (Tr. 3930-3931).

I consider a union depot located at the Plaza, as indicated by Railroad Commission Exhibit 4-B, as more accessible for vehicular traffic than a depot located as proposed [fol. 435] by the carriers at the site of the present Southern Pacific depot, Central and Fifth Street (Tr. 3999-4000).

HARRY HAWGOOD was called as a witness on behalf of the City of Los Angeles and, having been duly sworn, testified as follows:

I am a Civil Engineer and have been so engaged for fifty years. I have been Chief Engineer of the Portland-Willamette Railway and of Los Angeles and Salt Lake, now the Union Pacific. I was also at one time, from 1888 to 1894, resident engineer for the Southern Pacific in charge of bridges and buildings between Los Angeles and El Paso. I have made an extensive study of the grade crossing elimination and union depot problem in Los Angeles. I have studied the so-called Plaza plan and also the carriers' plan, sometimes referred to in this case as the Titcomb plan. I am familiar with the street layout for the location and general conditions surrounding the proposed plans and of the general traffic situation in Los Angeles, both as to vehicular and rail transportation. In my opinion the best solution of the grade crossing problem of the steam railroads in Los Angeles is by the construction of viaducts over the river and a union station. The best location for such a union station is at the Plaza. By the "Plaza" I mean the Plaza area as heretofore outlined by the order of the Interstate Commerce Commission and the State Railroad Commission (Tr. 4214-4215). One of the chief reasons for this opinion is that the Plaza is at the head of the main axis of travel through Los Angeles in a north and south direction and the location lends itself very well to what, in my opinion, must come sooner or later, that is subways, and they would also be generally in a north and south direction. It is also the point where the railroads are the closest together and can be gathered together with the smallest amount of track. All of these three railroads come under

the North Broadway bridge (Tr. 4215-4216). A further consideration favoring the location at the Plaza is convenience to the street car service, which is better at that point [fol. 436] than under the carriers' plan. There are more street cars which pass there reaching greater portions of the City and the bulk of the passengers use street cars. I have examined the plans prepared by Mr. Hill and introduced as Railroad Commission Exhibit 4-B. I have gone over the plan in some detail and believe that it is a practicable, workable and desirable plan. There are no features of the plan to prevent it from being carried forward and put into complete effect. It would result in an efficient operation (Tr. 4218). The passenger ramps in the Arcade Southern Pacific Station are too steep. The grade is 16 per cent and the maximum of a properly constructed layout in 10 per cent. The Plaza site has an advantage in that you can distribute the passengers at two levels. You can distribute them to taxi cabs or autos on the Alameda Street level or you can distribute them on the Plaza level. At the Plaza the street cars could be looped around in front of the station, the same as they do at the union station in Washington (Tr. 4224). The track layout as shown on Exhibit 4-B is adequate and sufficient, and is in agreement with standard practice and usage. There is room at the location shown on Exhibit 4-B to take care of necessary expansion that could reasonably be expected during the life of this union station (Tr. 4226). The Arcade station will not permit of any feasible expansion without doing away with Alameda Street and crossing over to the east of Alameda and acquiring expensive property occupied now by industrial use (Tr. 4227). The plaza site topographically lends itself very well to subways. There is the low level on Alameda Street from which it would take but very little depression to reach proper subway level. Being at the end of the traffic axis of the City, it lends itself very well to the traffic consideration. It can be done at the Arcade depot, but it would require much longer incline approaches to get underground and then there would be trouble in turning at right angles to get into the flow of the traffic north and south at Main or Broadway or Spring Streets (Tr. 4229).

[fol. 437] G. E. DONNATIN was called as a witness on behalf of defendant and, having been duly sworn, testified as follows:

I am Terminal Train Master of the Southern Pacific Company and in the discharge of my duties I supervise the operation of the Los Angeles Terminal of that Company. I have served in the locomotive service, as freight brakeman and conductor, as yard master, as assistant train master, from 1906 to 1923, and from 1923 to the present time I have officiated as Train Master (Tr. 4283). I have this criticism of Commission's Exhibit No. 31. It does not reflect the true situation. That chart is supposed to represent what is being done at the present time in the Central Station. * The coaches and rear end of our trains are set up right now substantially the same as I have set them up in Exhibit No. 36. We set the head end cars up, it is very true, four or five hours in advance of leaving time. That is not necessary but we have no other use for the tracks and we set them up for economy sake more than anything else. After we get our head ends all set up we can use the switch engine for other purposes. Those advance occupations that take place now are caused entirely as a matter of convenience. If we have any need for that space it would not be necessary to set up these trains more than thirty minutes before they left (Tr. 4298). As a matter of fact we have vacant station space and sometimes set up the trains four or five hours before they are due to depart. This is not necessary (Tr. 4299). I have been operating the Southern Pacific Station for some years and in my opinion, with the present facilities of eight tracks, I would say that we could handle 160 trains a day there using the same facilities (Tr. 4302). It is my opinion that the present Southern Pacific facilities could handle two or three times as much business, that is the number of trains, as there is now coming into and out of the Southern Pacific Station (Tr. 4314).

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* Thereupon there was offered and admitted in evidence Carriers' Exhibit No. 36 entitled "Proposed Train Movements in and out of Station, Joint Terminal Los Angeles & Salt Lake Railroad and Southern Pacific (Tr. 4295).

E. O. Brown was called as a witness on behalf of defendants and, having been duly sworn testified as follows:

[fol. 438] I am the terminal train master of the Santa Fe Railroad; have occupied that position for three years and have had 35 years of railroad experience (Tr. 4351).

There is lots of room at the Santa Fe passenger station for extension of tracks but we don't need any more room where we are. I have handled millions of people and hundreds of thousand of cars and I never held a passenger train out of the depot, and I have had as high as fifteen or sixteen sections of the train. I never had to stop a passenger train and never got but one train in on the wrong track (Tr. 4355).

The Santa Fe passenger facilities are absolutely ample. The operation is very economical. The reasons for that are that we have an open station, double end tracks, and when a train arrives at Los Angeles, five minutes after the train stops there is not a passenger left on the platform that came in on that train. Unloading and getting off the platform will average five minutes (Tr. 4356).

J. R. Hitchcock was called as a witness on behalf of defendants and, having been duly sworn, testified as follows:

I am the Assistant General Manager of the Santa Fe Railway Company and have held that position since January 1, 1920. From 1905 to 1920 I was Superintendent of the Los Angeles Division of the Santa Fe and I am familiar with the operation and layout the Santa Fe has in Los Angeles (Tr. 4435-4436).

The Santa Fe layout at the present time in Los Angeles is adequate. We have ample land and we have adjoining our present passenger tracks freight tracks that can be used in emergency for passenger purposes. A new passenger station could be erected, I estimate, one year from the time construction is started. The completion of such a plan would furnish us a permanent, adequate, economical and convenient passenger layout in the City of Los Angeles (Tr. 4468-4469).

I don't know of any location for a Santa Fe station which would be operated as economically as that which we now have.

[fol. 439] If it becomes necessary to take the coach yard or a part of the present coach yard or freight tracks near the passenger station for other passenger tracks, we have land on which we could place the necessary coach yard.

All the Santa Fe needs to do to have a modern, up-to-date, adequate station is to build a station building and rearrange, to some extent, station tracks. We have adequate roundhouse facilities within a reasonable distance; we have adequate station and other coach yard accessorial facilities adjacent or reasonably close; they are a little bit crowded but can be enlarged, practically, on their present site.

It would be almost a crime, as far as the Santa Fe is concerned, to take it away from the present site (Tr. 4471).

R. B. BALL was called as a witness on behalf of defendants and, having been duly sworn, testified as follows:

I am Chief Engineer of Santa Fe Coast Lines stationed at Los Angeles. Have occupied this position for about eight years. Have been in the service of the Santa Fe since 1901 (Tr. 4533-4534).

The advantages to be gained by a union station are questionable. There is no vital need for it and no real argument has been submitted as to why it is needed. The Santa Fe can take care of its own business at a nominal expense; and no evidence has been submitted to the contrary (Tr. 4538). The cost of the plan 4-B is under-estimated by the Commission's engineers. It has been under-estimated all the way through. An estimate of what the plan will cost will be submitted by the carriers and will show that the actual cost will be approximately 15 million dollars, including the necessary new trackage (Tr. 4538). While it is estimated that plan 4-B will cost 15 million dollars, it will never be built for that. I would advise the Santa Fe against going into this proposition unless they want to spend anywhere from 25 to 30 million as their proportion of that expense to make a layout that the carriers could operate and that [fol. 440] would be acceptable as a union station (Tr. 4544).

I have no details on which to base my estimate of 25 to 30 million dollars (Tr. 4566).

I have never read the Interstate Commerce Commission decision dated July 6, 1925, in Docket 14778, entitled: "The Los Angeles Passenger Terminal Cases" (Tr. 4598).

Plan 4-B is improperly made, but carriers will not accept it and it will have to be remade. I seriously object to the Commission's witnesses coming in and estimating one thing and then talking about another. Mr. Sachse, Mott and Hill all testify that the Hill plan is a sample plan only, that in speaking of the Plaza the particular area only is thought of and that one man should not attempt to produce a plan. These men are all talking about one thing and estimating another and that when the carriers undertake to work out this problem in the Plaza area, plan 4-B will have to be remade and carriers will be faced with an expenditure of between 25 and 30 million dollars, and in this the Commission is not being led on stable ground. Plan 4-B is not fair in that it does not give to the Commission a correct, workable estimate. These men are passing on to the carriers a cheap substitute that cannot be operated and will not be constructed, and the railroad engineers will have to assume the responsibility of the increased cost (Tr. 4546-4547).

The Santa Fe has plenty of land at its site to take care of its needs and for approximately a million dollars can build a station and rearrange the yards so that the business can be handled as far ahead as can be seen and it hesitates to embark on the unknown when it can fix its passenger facilities for all time for a million dollars (Tr. 4597).

The Santa Fe has no grade crossings, except North Main Street, which can be relieved at any time. It is located along the river bank and it is not sound that the Santa Fe should share in any ten, fifteen or thirty million dollar in- [fol. 441] vestment, when it can take care of its own business for a million dollars.

The Santa Fe does not need a union terminal. There is no demand for one and it would not be sound policy of the management or in justice to the stockholders to spend our share of the investment (Tr. 4598).

T. H. Williams, witness recalled on behalf of defendants, testified as follows:

At the present time we are operating 52 trains per day in the existing Southern Pacific-Salt Lake station, the joint station known as Central Avenue Station, and we are not having any difficulty in handling the business of the South-

ern Pacific and Salt Lake in and out of the station. It has not reached its capacity and the very fact that we only use eight tracks of the total number of tracks available, I think, is an indication as to the present use of the station as to its adequacy. The necessary use of the station is so light at this time that you have available storage space for long in advance of the departure of trains (Tr. 4612-13).

The transfer of passengers from one station to the other at Los Angeles is less than 2 per cent of the total and in view of this small number it cannot be said that a union station is necessary to avoid the inconvenience of transfer (Tr. 4614).

In 1915 the three roads were handling 126.3 trains per day. This decreased to 87.7 per day in 1920 and decreased further to 82 trains per day in 1925, a decrease of 30 per cent in 5 years, 1915 to 1930, and a decrease of 6 per cent the last 5 years, 1920 to 1925, and this in the face of the rapid increase in the population. This situation is brought about by the Pacific Electric absorbing all the suburban business, by the use of private automobiles and by the bus lines (Tr. 4615).

Summing up, and with a knowledge that from an operating standpoint, the central station is adequate for the present and for some future need, my conclusion is that a union sta- [fol. 442] tion is not necessary (Tr. 4617). I believe the Alameda situation is very bad and one that must be corrected. It is that belief which is inducing the Southern Pacific and Salt Lake to try to secure a separated approach to the Central station (Tr. 4618).

The reduction in the number of passenger trains on the part of the Southern Pacific is principally in the local trains, there being no substantial reduction in through trains. Unless conditions change, the future reduction in the number of trains is anticipated in that all purely local trains running less than 100 miles will be taken off (Tr. 4625-4626).

F. H. KNICKERBOCKER was called as a witness on behalf of defendants and, having been duly sworn, testified as follows:

I have been the General Manager of the Los Angeles and Salt Lake Railroad since 1924 and have had 26 years' experience in various capacities (Tr. 4633).

During the past five years there has been very heavy decrease in the passenger business of the Salt Lake Railroad, about 58% and there is little encouragement to hope that there will be any substantial increase during the next five five or ten years. Local passenger business has wholly disappeared leaving nothing but the long haul business and as to this it is not unreasonable to expect that the inroads made by motor vehicles will increase. In that event the question of passenger terminal facilities involving heavy expenditure becomes very serious (Tr. 4629).

In 1920 the Salt Lake unit of the Union Pacific handled a total of 1,784,421 passengers while during the year 1925 there was 788,741 passengers, a decrease of 55.8%. During same years the Union Pacific as a whole handled 11,254,003 passengers compared with 4,638,102 passengers or a decrease of 58.8%. This decrease is attributed almost wholly to competition of motor vehicles.

Each year sees a further encroachment of the motor vehicle in overland travel. During the past two years there [fol. 443] has been no substantial decrease as to the number of trains but very few local trains are operated, and the only local trains now operated are ones that operate to Pasadena and Long Beach and carrying through sleepers. From a traffic standpoint there is no real necessity for increasing the number of overland trains. There is no necessity for increasing the number of passenger trains during the next ten years but there is a hope that some improvement in character of trains and little faster time may stimulate the business. The very small proportion of passenger traffic that is interchanged is not of sufficient volume to warrant large expenditure in a union station (Tr. 4630-32).

The Union Pacific has sufficient holdings on the east bank of the river to construct an adequate passenger terminal without acquiring any more property. The logical place would be at Seventh Street and an expenditure between $750,000.00 and $1,000,000.00 would provide adequate facilities, which would take care of the Salt Lake for the next 10 or 15 years. In face of the increase in the population in Southern California, Salt Lake passenger business has shrunk 55.8%, attributed to the use of the motor vehicle. This percentage is in the number of passengers and the revenue. In 1924 the passenger revenue of the Salt Lake unit decreased $1,200,000.00 compared with 1923. In the

past two years there has been a decrease on this part of the Union Pacific in passenger revenue of $1,600,000.00. There has been practically no local business in the last two years. A large investment in passenger facilities would not be wise (Tr. 4636-4641).

Thereupon counsel for the carriers introduced and there was accepted in evidence a certified copy of an agreement and deed between J. W. Wolfskill et al. and Southern Pacific Company, dated October 28, one thousand eight hundred and eighty-nine, which was marked as carriers' Exhibit 87 and which is in the following form:

CARRIERS' EXHIBIT 87

"No. 2302, Book 630, Page 187, of Deeds

[fol. 444] This indenture, made this 28th day of October, A. D. one thousand eight hundred and eighty-nine, by and between J. W. Wolfskill & Mrs. Francisca Wolfskill de Shepherd of the City of Los Angeles, County of Los Angeles, State of California, parties of the first part, and the Southern Pacific Railroad Company, a corporation, duly incorporated and existing under the laws of the State of California, the party of the second part.

Witnesseth: That whereas, an agreement was made and entered into on the 23rd day of June, 1887 by and between the aforesaid parties of the first part and Leland Stanford of the City and County of San Francisco, State of California, for and on behalf of the Southern Pacific Railroad Company and other railroad corporations, which said agreement was in writing and was in words and figures as follows, to-wit:

"'This Memorandum of Agreement made and entered into this 23rd day of June, A. D. 1887, by and between J. W. Wolfskill and Francisca Wolfskill de Shepherd of the County of Los Angeles and State of California, as parties of the first part and Leland Stanford of the City and County of San Francisco, State of California, for and on behalf of the Southern Pacific Railroad Company, and other railroad corporations whose interests may be hereby affected, as party of the second part, witnesseth that for and in consideration of the promises and undertakings hereinafter

contained on the part of said party of the second part, the parties of the first part do hereby consent, promise and agree, that upon the completion and establishment of the railroad passenger depot hereinafter mentioned they will by good and sufficient deed of grant, bargain and sale, convey free of charge to the Southern Pacific Railroad Company, a corporation, duly incorporated and existing under the laws of the State of California, or to such other railroad corporation as the party of the second part may designate all of that certain real property situate, lying and being in the City of Los Angeles, County of Los Angeles and State of [fol. 445] California, and bounded and particularly described as follows, to-wit: Commencing at a point in the westerly line of Alameda Street, where the northerly line of 6th Street, if produced would intersect the same, and being also 192 feet northerly from the southeasterly corner of the J. W. Wolfskill Tract, so called; thence northerly along the westerly line of Aladema Street, 1900 feet, thence at right angles westerly 125 feet, thence southwesterly at an angle of forty-five degrees 247 feet and 49/100ths of a foot to a point distant at right angles from the westerly line of Alameda Street, 300 feet, thence southerly and parallel with said last mentioned line 1520 feet to the northerly line of Sixth Street produced as aforesaid, and thence southeasterly in a right line to the place of beginning.

Subject to the condition that said premises shall be used for a general railroad passenger station and shall revert to the grantors upon breach of said condition by said grantee. And in consideration of the premises the party of the second part covenants, promises and agrees to and with the parties of the first part, that the said Southern Pacific Railroad Company, or some other railroad corporation to be hereafter designated by the party of the second part, shall and will on or before the first day of October, A. D. 1887, commence and prosecute diligently to completion upon the premises hereinbefore described, an arcaded passenger depot, similar in size and general design to the depot now in use in the City of Sacramento, and that said depot shall be used and maintained for general passenger, baggage and express business, and shall contain eating rooms, for the accommodation of travelers, but shall not be used, for general hotel business.

" 'Said party of the second part further covenants that he will within three years from and after date of these presents cause to be removed and abandoned the existing track of the Los Angeles and Independence Railroad now in San Pedro Street from a point, the northerly line of Vejar Street, to a point being the northerly line of the land of the said Francisca Wolfskill de Shepherd, and upon said [fol. 446] removal will cause to be reconveyed to her by the said Southern Pacific Railroad Company, free of charge, that certain strip of land 30 feet wide by about 200 feet in length heretofore conveyed by her to said company.' "

" 'In witness whereof the said parties have hereunto set their hands on the day and year first above written.' "

" '(Signed) J. W. Wolfskill, (Signed) Francisca W. Shepherd, (Signed) Leland Stanford.' ".

And whereas, the aforesaid Leland Stanford, the party of the second part in the aforesaid agreement has designated the Southern Pacific Railroad Company, a corporation, and being the party of the second part herein, as the party to whom the conveyance described in the aforesaid agreement, should be made, under and pursuant to the terms thereof, and

Whereas, the said Southern Pacific Railroad Company, has caused to be erected and completed upon the premises hereinafter described, and being the same premises described in the aforesaid agreement, an arcaded passenger depot such as is particularly described in the aforesaid agreement, and the same is now in use for the purposes for which the same was erected as in said agreement particularly specified.

Now, therefore, the aforesaid parties of the first part, for the purposes of carrying out the conditions by them to be performed, under and pursuant to the terms of the aforesaid and recited agreement, and in consideration of the foregoing, do hereby grant, bargain, sell and convey, to the aforesaid party of the second part, the said Southern Pacific Railroad Company, a corporation, duly incorporated and existing under the laws of the State of California, all that certain real property, situate, lying and being in the City of Los Angeles, State of California, and bounded and particularly described as follows, to-wit:

[fol. 447] Beginning at the southwest corner of Fourth and Alameda Streets in said City of Los Angeles, and running thence along the southerly line of said Fourth Street, North 87°5′ west, 125 (one hundred twenty-five) feet to a point; thence South 47°55′ west 247.48 (two hundred forty-seven and 48/100) feet to a point, which point is also the most easterly common corner of Lots 20 (twenty) and 21 (twenty-one) of Block 13 (Thirteen), of the Wolfskill Orchard Tract; thence south 2° 55′ west, 1530.93 (fifteen hundred thirty and 93/100) feet to a point in the northerly line of Sixth Street, which point is also the south east corner of Lot 1 (One) in Block 14 (Fourteen) of the said Wolfskill Orchard Tract; thence along the northerly line of Sixth Street, South 55°34′ east 351.90 (three hundred fifty-one and 90/100) feet to the westerly line of Alameda Street, thence along the westerly line of Alameda Street north 2°55′ east, 1890 (eighteen hundred ninety) feet to the point of beginning, and containing 12.03 acres of land; which said premises last described are particularly delineated and described upon a map thereof made by J. H. Dockweiler, C. E. dated October 1st, 1889, and hereto annexed and made a part hereof.

And the parties of the first part do hereby declare that the aforesaid conveyance is made subject to the terms and conditions of the said agreement, which is hereinbefore recited at length, and especially subject to the condition that the aforesaid granted and conveyed premises shall be used for a general railroad passenger station, and for general passenger, baggage and express business and not otherwise; provided that eating rooms for the accommodation of travelers may be also maintained therein; and that said premises shall revert to the grantors, or their heirs, executors, administrators or assigns, upon breach of said condition, or of any of the other of the conditions in said agreement herein, recited at length to be performed by the said Southern Pacific Railroad Company, a corporation, or its assigns.

To have and to hold, the aforesaid premises with the [fol. 448] appurtenances as aforesaid; unto the said party of the second part, and its assigns forever.

In witness whereof the said parties of the first part have hereunto set their hands and seals, this 28th day of October, 1889.

J. W. Wolfskill. (Seal.) Francisca Wolfskill de Shepherd. (Seal.)

Signed, Sealed and Delivered in Presence of Henry M. McGill.

Map of the S. P. R. R. Co. Arcade Depot Grounds, situated on the westerly side of Alameda Street bet. Fourth & Sixth Streets, Los Angeles, Cal. and being a portion of the Wolfskill Orchard Tract as per map of same recorded in Book 30 pages 9 to 13 Miscellaneous Records, Los Angeles, Co., Cal. Being the property to be conveyed by J. W. Wolfskill and Mrs. Francisca Wolfskill de Shepherd to the Southern Pacific Railroad Company, a corporation duly incorporated and existing under the laws of the State of California, Map and survey made by J. H. Dockweiler, C. E. October 1st, 1889.

Scale 120 feet to 1 inch."

STATE OF CALIFORNIA,
County of Los Angeles, ss:

On this 28th day of October in the year one thousand eight hundred and eighty-nine before me, N. Lindenfeld, a Notary Public in and for said County of Los Angeles, State of California, residing therein, duly commissioned and sworn, personally appeared J. W. Wolfskill, known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that he executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal, the day and year above written.

W. Lindenfeld, Notary Public. (Notarial Seal.)

STATE OF CALIFORNIA,
City and County of San Francisco, ss:

On this thirty-first day of October in the year one thousand eight hundred and eighty-nine, before me, Henry M. McGill, a Notary Public in and for said City and County of San Francisco, residing therein, duly commissioned and

sworn, personally appeared Mrs. Francisca Wolfskill de Shepherd, known to me to be the person described in, whose [fol. 449] name is subscribed to and who executed the within instrument, described therein as a married woman; and upon an examination without the hearing of her husband, I make her acquainted with the contents of the said instrument, and thereupon she acknowledged to me that she executed the same, and that she does not wish to retract such execution.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office in the City and County of San Francisco, the day and year in this certificate first above written.

Henry M. McGill, Notary Public. (Notarial Seal.)

STATE OF CALIFORNIA,
County of Los Angeles, ss:

I hereby certify the foregoing to be a full, true and correct copy of the instrument appearing recorded in Book No. 630 of Deeds, Page 187 Records of Los Angeles County, and that I have carefully compared the same with the original record.

In witness whereof I have hereunto set my hand and affixed my Official Seal this 27th day of Feb. 1926.

C. L. Logan, County Recorder, by (Signed) W. Baker, Deputy. (Seal County Recorder Los Angeles County, California.)

#30. A full true and correct copy of the original recorded at request of W. F. & Co. Feb. 19, 1890 at 12 min. past 2 P. M.

John W. Frances, County Recorder, by David S. Whitaker, Deputy.

R. BOYLIN was called as a witness on behalf of defendants and, having been duly sworn, testified as follows:

I am a land Appraiser for defendant Southern Pacific Company and have been engaged in the Federal Valuation of Railroads since 1915 in the service of the Interstate Commerce Commission and performing that work from

1915 until 1922, thereafter, with the Chesapeake & Ohio and from 1922 to date in the employ of the Southern Pacific Company. While in the employ of the Interstate Com- [fol. 450] merce Commission, my duties required me to make a valuation of rights of way and terminals of carriers, particularly for four years of that time in valuing the lands of carriers west of Chicago, principally in California (Tr. 4844).

**Carriers' Exhibit No. 80, being a map of the union passenger terminal as presented by the Railroad Commission, shows the area embraced within the Hill plan.

When the work of appraising the property was started, an independent zoning was made, which differs in some respects from the zoning made by Mr. McAuliffe. An estimate of the market value of all of the lands had been made and amounts to $3,125,393.00 (Tr. 4848). The total market value for the land as developed by Mr. McAuliffe was $2,520,981.00. The figure quoted is the present market value. The total market value of the land within the terminal would be $3,112,493. When consideration is given to the additional cost incurred to acquire the land for railroad purposes, the improvements, incidental expense, etc., the cost of acquiring and putting the land into railroad operation would be $7,744,415. This compared with $4,316,988, figured by Mr. McAuliffe. Adding the additional areas shown on the map as Zones 8½ and 7½ valued at $198,912, the grand total cost of acquisition is $7,943,327. A survey of the improvements has been made and they are valued at $1,068,117 (Tr. 4870-4875).

Market value of the new lands which would have to be acquired by the railroad in putting their plan into effect is estimated at $147,120, and the total cost of acquisition estimated at $317,803 (Tr. 4875).

The grand total of $7,943,000 includes $1,213,617 for improvements. $112,104 for city taxes based on rate of $3.82 for 2.72 years on land and 1 year on buildings (Tr. 4879).

** Thereupon there was offered and admitted in evidence, Carriers' Exhibit No. 80 entitled "Los Angeles Union Passenger Terminal proposed by the California Railroad Commission in the City of Los Angeles", which exhibit is certified separately and transmitted as an original exhibit (Tr. 4845).

Present market value of the Hanchett tract is about $3,075,000. The tract was consolidated by Hanchett about 1917, was transferred to the El Paso and Southwestern in [fol. 451] 1924 at $3.70 per square foot, or about six and a quarter million dollars. Legal title passed to the Southern Pacific in 1926 (Tr. 4893-4897).

W. M. JAEKLE was called as a witness on behalf of defendants and, having been duly sworn, testified as follows:

I am Assistant Engineer of Maintenance of Way and Structures of Southern Pacific Company and have been engaged in active railway service in the Engineering Department of various railroads for 22 years (Tr. 2850).

Thereupon there was offered and admitted in evidence Carriers' Exhibit No. 88, being entitled: "Estimate Los Angeles and Salt Lake Railway Company and Southern Pacific Company Joint Passenger Terminal Facilities," which is certified separately and transmitted as an original exhibit (Tr. 4954).

Carriers' Exhibit 88 is a detailed estimate of the cost of that part of the carriers' project of the Los Angeles and Salt Lake Railroad and Southern Pacific Company. It does not include the Santa Fe estimate, which is already in evidence, presented by Mr. Ball. The first sheet of carriers' Exhibit 88 is a summary of the cost (Tr. 4956).

I have prepared an exhibit making a comparison of the costs of the Plaza plan as estimated by the Commission's and carriers' engineers, respectively.

Thereupon there was offered and admitted in evidence Carriers' Exhibit No. 90, being entitled "Comparisons of Estimates of Commission's Plaza plan as made by Commission Engineers and by Carriers' Engineer," which is in the following form (Tr. 4955):

[fol. 452] Case No. 970

CARRIERS' EXHIBIT No. 90

Comparison of Estimates of Commission's Plaza Plan as made by Commission's Engineers and by Carriers' Engineers

Items	By carriers' engineers, Units	Totals	By Commission's engineers
Grading:			
Excavation, 10,000 C.Y. @ $.70	$7,000		
Embankment, 150,000 C.Y. @ $7.21	31,500		
		$38,500	$38,500
Retaining Walls:			
Concrete, 2,615 C.Y. @ $15.00		39,225	39,225
Tracks:			
New 90# track, 38,140 ft. train tracks 5,580 ft. mail & express			
43,720 ft. # $5.00		218,600	205,000
Switches:			
Split, 38 Ea. @ $400.00	$15,200		
Double Slip, 19 Ea. @ $1800.00	34,200		
		49,400	44,800
Crossings:			
Crossings, 17 Ea. @ $1200.00		20,400	25,200
Paving, Curb & Gutters		107,500	107,500
Interlocking: Labor and material		310,000	250,000
Station Building, 3,222,200 C.Y. @ $.50	$1,611,100		
1,535,100 " " .30	460,530		
		2,071,000	1,500,000
Bridge over Alameda Street		57,475	.....
Umbrella Shade, 18,500 L' @ $20.00		370,000	140,000

Drainage, Piping & Lighting			136,000	136,000
Carried Forward			$3,418,100	$2,486,225
[fol. 453] Brought Forward			$3,418,100	$2,486,225
Engineering, Interest and Contingencies 27%			922,887	671,280
			$4,340,987	$3,157,505

19—470

Santa Fe track changes incidental to Plaza plan not included in Hill estimate:

Connection to Serve Industries Keller St.:			
1600' new track @ $5.00	$8,000		
2 Frogs and Switches @ $400.00	800		
Grading, 800 C.Y. @ $.50	400		
		$9,200	
Connection to Commercial Street:			
750' new track at $5.00	3,750		
1 Frog and Switch @ $400.00	400		
Grading, 375 C.Y. @ $.50	187		
Paving, 3,150 Sq. ft. @ $.30	945		
		5,282	
Switching Load—Ducommon St. to N. of Macy St.:			
2,900 ft. new track @ $5.00	14,500		
6 Crossings @ $1,200.00	7,200		
Grading, 1,350 C.Y. @ $.50	675		
1 Switch, @ $400.00	400		
		22,775	
Fourth River Track—Ducommon St. North:			
2,600 ft. new track @ $5.00	13,000		
4 Crossings @ $1,200.00	4,800		
Grading, 1,300 C.Y. @ $.50	650		
		18,450	

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CARRIERS' EXHIBIT No. 90—Continued

Items		By carriers' engineers, Units	Totals	By Commission's engineers
Double Track—Ducommon to Sixth Streets:				
10,200 ft. new track @ $5.00	51,000			
2 Frogs and Switches @ $400.00	800			
1 Crossing @ $1,200.00	1,200			
Grading, 5,100 C.Y. @ $.50	2,550			
		55,550		
Carried Forward		$111,257	$4,340,987	$3,157,505
[fol. 454] Brought Forward		$111,257	$4,340,987	$3,157,505
Passenger Connection—Ducommon to First Streets:				
3,600 ft. new track @ $5.00	$18,000			
2 Frogs and Switches @ $400.00	800			
5 Crossings @ $1,200.00	6,000			
Grading, 1,800 C.Y. @ $.50	900			
		25,700		
Connections to Yard Foot of Jackson Street:				
1,200 ft. new track @ $5.00	6,000			
4 Frogs and Switches @ $400.00	1,600			
Grading, 600 C.Y. @ $.50	300			
		7,900		
Switching Load Alhambra Avenue North:				
5,200 ft. new track @ $5.00	26,000			
Grading Embankment, 70,000 C.Y. @ $1.00	70,000			
Riprap, 4,000 C.Y. @ $3.00	12,000			
Replace switches, 1 @ $75.00	75			
Paving Main St. 1,400 sq. ft. @ $.50	700			
2 Crossings @ $1,200.00	2,400			
		111,175		
Total Estimates Cost New Tracks		256,031		

Add 27%	69,129		
Total	$325,160		
Damages and Property Purchase:			
Structural damages Crane Co. Keller St.	25,000		
Structural damages Cudahy Packing Co.	50,000		
Purchase Alhambra Ave. Main Street	25,000		
Bureau of Power & Light Changes	5,000		
		430,160	
Carried Forward		$4,771,147	$3,157,505
[fol. 455] Brought Forward		$4,771,147	$3,157,505
Additional Interlocking: North Broadway	$40,000		
Aliso Street	26,000		
Alhambra Avenue	8,000		
Engineering, Interest and Contingencies 27%	19,980		
		93,980	
Land and Improvements		7,943,327	4,316,988
Excess Cost Aliso St. Viaduct and R. R. Bridge across River		514,650	514,650
		13,323,104	7,989,143
S. P. Coach Yard		419,679	416,780
Salt Lake Unit No. 2	93,072		
Alhambra Connections, S. P.	85,953		
" " S. L.	24,670		
S. P. Unit No. 2	444,769		
Second Track, Macy Street	30,592		
		679,056	511,200
S. P.-S. L.-S. F. Connections at east and west banks river at Hobart		159,150	258,480
		14,580,989	9,175,603
Vignes Street Subway		315,500	
Parking Space East of Los Angeles Street:			
Paving, 96,000 Sq. ft. @ $.30	28,800		
Curbing, 800 L. ft. @ 1.50	1,200		
Engineering, Interest and Contingencies, 27%	8,100	38,100	
Totals		$14,934,589	$9,175,603

[fol. 456] The comparison of the estimates of the Commission's Plaza plan, made by the Commission's engineers, with those made by the carriers' engineers, is explained as follows: The two agree on the first and second items. The cost of the tracks is increased about $13,600.00 due to the fact that the additional 1400 feet of track along the Santa Fe right of way shown in Exhibit 4-B was not in the original exhibit. Additional switches also increased the item in the Plaza estimate $4,600.00. The crossings in the carriers' estimate represents a saving of $4,800.00. The cost of interlocking has been increased from $250,000.00 to $310,000.00. Under Exhibit 4-B, 194 movements are necessary instead of the 157 previously estimated. The station building has been increased from $1,500,000.00 to $2,071,000. In this estimate there was not included the projection of the building over Alameda Street. The revised estimate has been made on the basis of Mr. Hill's dimensions and gives 3,206,400 cubic feet at 50¢ for the building and 1,535,100 cubic feet at 30¢ for the concourse. The total of these two items is $2,093,000.00 — slightly in excess of the revised estimate (Tr. 4962).

Nothing has been provided in the Commission's engineers' estimate for the bridge over Alameda Street and this adds $57,485.00 to the estimate.

In the item of umbrella sheds, the Commission's engineers estimate $140,000.00 but the carriers' engineers estimate $370,000.00. The difference is due to the fact that the Commission's engineers have not provided umbrella sheds over the entire length of the passenger platforms and none at all over the baggage platforms.

Up to this point, the estimate of the carriers' engineers is $3,418,000.00 compared with the Commission's total of $2,486,225.00; adding the usual allowance for engineering, etc., the comparison becomes $4,340,987.00 and $3,157,505.00 (Tr. 4963).

The additional tracks amount to $430,160.00, and additional interlocking of $93,980.00.

[fol. 457] For the land and improvements, the carriers' estimate is $7,943,327.00 compared with the Commission's figure of $4,316,988.00.

The excess cost of the Aliso Street viaduct is agreed upon at $514,650.00.

A slight difference in the estimate of the Southern Pacific coach yard increases the Commission's estimate by less than $3,000.

The total cost of the necessary connections, etc, is $679,056. for the carriers' estimate, compared to $511,200.00 for the Commission's, the difference being due to revision and correction of the previous estimate (Tr. 4965).

The connections on the east and west banks of the river at Hobart are estimated by the Commission at $258,480.00 and by the carriers' engineers at $159,150.00.

The Vignes Street subway has been estimated at $315,500.00 by the carriers, no similar item being provided by the Commission's engineers.

To provide space for an auto park east of Los Angeles Street adds $38,100.00 to the estimate of the carriers' engineers, the Commission's engineers providing no estimate for this item.

The totals for the carriers' estimate of the Hill plan is $14,934,589.00 against the Commission's engineers' estimate of $9,175,603.00 (Tr. 4966).

I will wish to make a few observations of some of the Commission's exhibits on the matter of adequacy. California Railroad Commission Exhibit No. 28 was presented to show normal and maximum number of passengers handled in and out of Los Angeles for a period of 60 minutes in January, 1926. The Commission's witness stated the information from which this statement was compiled was obtained from the carriers. The compilation of this information in Commission's Exhibit No. 28 is somewhat erroneous and misleading. It shows the total number of passengers handled in the peak hour of a normal day of 1508, and a maximum day of 1837. We have prepared an [fol. 458] exhibit entitled, "Statement showing normal and maximum number of passengers handled in and out of Los Angeles for a period of 60 minutes, January, 1926".

Thereupon there was introduced in evidence carriers' Exhibit No. 101, which is in the following form (Tr. 5027):

CASE No. 970

CARRIERS' EXHIBIT No. 101 (REVISED).

C. R. C. Exhibit No. 28 as Revised by Carriers

Statement Showing Normal and Maximum Number of Passengers Handled In aod Out of Los Angeles for a Period of Sixty Minutes, January — 1926

Company	Peak hour of normal day		Peak hour of maximum day		
S. P. Co.	859	7:30 to 8:30 A. M.	973	7:30 to 8:30 A. M.	Jan. 17th
Santa Fe	482	2:00 to 3:00 P. M.	528	2:00 to 3:00 P. M.	Jan. 17th
Salt Lake	179	8:30 to 9:30 A. M.	304	6:30 to 7:30 A. M.	Jan. 18th

Maximum Hour—7:30 to 8:30 A. M.

Company	Normal day	Maximum day
S. P. Co.	859	973
Santa Fe	121	160
Salt Lake	0	0
Total	980	1133

Normal day—January, 1926.
Maximum day—January 17th, 1926.

This shows the number of passengers handled in the peak hour of a normal day as 980, and maximum day as 1133. The discrepancy in Commission's Exhibit No. 28 is apparent in that the peak hour of passengers handled on the Santa Fe is between 2 and 3 p. m., whereas the peak hour of the Southern Pacific is between 7:30 and 8:30 a. m., and the peak hour of the Union Pacific is between 6:30 and 7:30 a. m. Manifestly we cannot add the passengers handled in these three different peak hours and then call it a maximum number of passengers handled in a period of 60 minutes in Los Angeles (Tr. 5028).

With reference to the adequacy of the Southern Pacific station it is stated on page 37 of the Sachse report that [fol. 459] "Based on Chicago experience the 12 tracks of the Southern Pacific station will be sufficient for 140 trains expected in the future."

While Mr. Sachse refers to 140 trains per day, our chart of trend of passenger traffic shows that this number of trains is not likely to be required in Los Angeles for the three carriers for a period of 50 years, and probably longer, for the Southern Pacific and Union Pacific alone, which will occupy the Central station under the carriers' plan. It seems to me it is therefore plainly evident that the con-

clusions of the Commission's witness on page 3220 of the transcript that the capacity of the station yard at the Central Station for joint use of the Southern Pacific and Salt Lake will not be adequate for a period of more than 15 years, is not sound and hardly based on the facts in the case (Tr. 5073-5075).

At Los Angeles the transfer of passengers between stations is practically negligible.

Checks made in January and February, 1926, covering periods of a week or more indicate that this transfer between stations did not exceed 1.4 per cent of the incoming and outgoing passengers, as shown on carriers' Exhibit 107 (Tr. 5093).

Thereupon there was offered and admitted in evidence Carriers' Exhibit No. 106, being entitled: "Comparative Financial Statement Carriers' Plan—Plaza Plan," which is in the following form (Tr. 5089).

Case 970 et seq.

CARRIERS' EXHIBIT No. 106

Comparative Financial Statement—Carriers' Plan—Plaza Plan

Carriers' Plan

A	B	C	D	E	F	G
Description	New money	Credits	Excess annual operating expenses capitalized	Net equivalent cost B-C plus D	Valuation existing facilities	Total equivalent valuation
1. Sou. Pac. & Salt Lake, New Construction and Land	4,330,281	.....	.....	.....	.....	.....
2. A. T. & S. F. New Construction	1,182,317	.....	.....	5,512,598	.....	.....
3. Passenger Station and Appurtenances—Central Station	.....	.....	.....	.....	802,282	.....
4. Land Central Station Site	.....	.....	.....	.....	3,837,550	.....
5. Land Santa Fe Site	.....	.....	.....	.....	950,000	.....
6. Land Salt Lake for pass. tracks, 6th Street North	.....	.....	.....	.....	151,200	.....
7. Land Salt Lake for pass. tracks, 6th St. to South of 9th St.	.....	.....	.....	.....	73,313	.....
8. Totals	5,512,598	.....	.....	5,512,598	5,814,345	11,326,943
	Plaza Plan					
9. New Construction and Land	14,934,589	.....	.....	.....	.....	.....
10. Central Station Site:						
Land fee owned 1,006,150	.....	.....	.....	.....	.....	.....
Less value loss station building 646,950	.....	.....	.....	.....	.....	.....
359,200	.....	359,200	.....	.....	.....	.....
11. Santa Fe Station site	.....	950,000	.....	.....	.....	.....
12. Land Santa Fe—Operating	.....	.....	.....	.....	477,258	.....
13. Excess Operating Const. Plaza Plan over Carriers, Capitalized:						
85372 Annually at 5%	.....	.....	1,707,440	.....	.....	.....
14. Totals	14,934,589	1,309,200	1,707,440	15,332,829	477,258	15,810,087

[fol. 461] Carriers' Exhibit 106 shows a comparison of new money costs. The upper half of the sheet has to do with the carriers' plan. The first item "Southern Pacific-Salt Lake New Construction, $433,281", is the total of the details that were submitted in Exhibit 88. $1,182,317 in the first column is the estimate submitted by Mr. Ball for Santa Fe improvements, making a total of new money for the carriers' plan of $5,512,598. That same amount is shown in column E and F. We have various items representing a valuation of existing facilities that will be used in the new project of the carriers totaling $5,814,345, making the total equivalent valuation $11,326,943. That would be the facilities in passenger use if the carriers' plan were put into effect. On the lower half of the sheet are the items for the Plaza plan. $14,934,589 is the amount I testified to in Exhibit 90 showing comparative costs of the carriers' plan and the Plaza plan. In the next column headed "Credits" we have two items amounting to a total of $1,309,200. Item 10, "Central Station Site", shows the land owned in fee, less the Wolfskill land (Tr. 5089-5090).

The Hanchett lands are already owned by the Southern Pacific Company and constitute two-thirds of the entire lands involved in the so-called Hill Plan (Tr. 5292). I think the buildings that are proposed by Mr. Hill, described in his testimony, would cost $2,071,000, as indicated in Carriers' Exhibit 90 (Tr. 5293). The station building at the Arcade site cost $462,043 as of 1914. It would cost a little over $800,000 to reproduce that station building at the Arcade site at the present time (Tr. 5294). My total estimate of the cost of the Hill plan amounts to $14,934,589. The total allowance made by the Interstate Commerce Commission, appearing at page 449 of the report, shows $9,256,118. My total here is some $5,800,000 in excess of the figure allowed by the Interstate Commerce Commission in its decision in Case 14778 (Tr. 5297).

Our checks showing the number of steam line passengers transferring to steam lines in Los Angeles shown on Car-
[fol. 462] riers' Exhibit No. 107, were made by putting special men on each passenger train. In the case of the Southern Pacific, we used conductors, and I think the same sort of men were used on the other two roads. These men

boarded the trains and ascertained from each passenger as to what his destination was and whether he was transferring to another train or to another steam line or another station. The check included only those passengers who intended to transfer immediately from one of these steam lines to another (Tr. 5298-5299).

With reference to the Plaza lands, my figures, shown on Carriers' Exhibit No. 99, include 65 to 89 per cent for the additional cost of acquisition (Tr. 5304).

R. BOYLIN, was recalled as a witness on behalf of defendants and, having been duly sworn, testified as follows:

I am inclined to agree with Mr. McAuliffe that if the entire Central Station tract of 689,468 square feet were fee-owned, with no question of its title whatever, it would have a salvage value of $4.50 per square foot or $3,102,606. Now, as I recall Mr. McAuliffe's testimony, on cross-examination by Mr. Karr, he stated that if that were not true but those were two separate ownerships, the Central Avenue frontage, that is, the fee-owned portion, would have a salvage value of $5 per square foot, and that the Wolfskill tract would have a salvage value of $3.50 per square foot (Tr. 5215-5216).

I believe that the salvage value of the entire Central station tract, if it were in one ownership with an absoluetly clear title, would be $4.50 per square foot, which, for the 689,468 square feet contained in that tract, would amount to $3,102,606. Now, considering the Southern Pacific Company's portion of that tract (Tr. 5217) separately from the Wolfskill tract, if there were no possibility of recombining them, I think that the Wolfskill tract would not be worth over $3.50 per square foot. But it would be so manifestly to the mutual advantage of both of the owners to combine the tract and sell it as one the tract as a whole would have [fol. 463] a value of $4.50 per square foot; and to the Wolfskill deed I would consider that the proper proportion of that value would be $4.00 per square foot, or, for the 524,114 square feet, $2,096,456. That would leave as the salvage value of the fee ownership, or the price which the owner

of the Wolfskill tract could afford to pay to the Southern Pacific Company for fee ownership, $1,006,150 or $6.08 per square foot (Tr. 5218).

F. L. BURCKHALTER was called as a witness on behalf of defendants and, having been duly sworn, testified as follows:

I am First Assistant General Manager of the Southern Pacific Company and have been in the railroad business twenty-six years. I have made an intensive study of the railroad situation in Los Angeles, with particular reference to passenger terminal facilities (Tr. 5133-5134). Considering all the parties in interest in this proceeding, there are two major objectives. One is the elimination of grade crossings, and the other, on the part of some of the parties, is the accomplishment of a union station enterprise. As far as the carriers are concerned, their project contemplates the elimination of both the steam and electric grade crossings, and it also contemplates, as far as the Santa Fe is concerned, the provision of a new passenger station, the Union Pacific and Southern Pacific to continue in the existing adequate central station. The Commission's plan provides for a union station, as shown by the Hill plan, but does not include the elimination of the Pacific Electric grade crossings, as I understand it. These proposals involve large expenditures, and I have endeavored to estimate or allocate the proportion of the proposed expenditures to grade crossing as distinguished from station improvement. Public benefits through the separation of grade crossings in Los Angeles will be great. The grade crossing situation is difficult; it is the most difficult situation of that kind anywhere in the West that I have ever seen or known of. It is a situation that has long been up for correction and the plans of the carriers afford a means of correction of this very bad grade crossing situation within [fol. 464] a very short period of time. The public interest will be served in the carriers' plan by an expediture on the part of the steam carriers for grade separation of about $4,330,000. This expenditure would accomplish the elimi-

nation of 43 steam line railroad grade crossings, over which there are about four thousand train movements per day. From data in the record I conclude that Alameda Street, which is occupied by the Southern Pacific and in part by the Union Pacific for a distance of about four miles is crossed by about 125,000 vehicles per day. From intersecting streets there are about four thousand street cars crossing Alameda Street today. If we assume there are two people on an average in the vehicles and about 20 people on an average on the street cars, we find that some 330,000 people per day cross the steam railroad lines on Alameda Street. The existing steam line operations impose a tremendous interference to that cross traffic and impose a considerable interference to the traffic along Alameda Street. There are also a good many pedestrians crossing the street as well (Tr. 5135-5136).

Mr. Jaekle introduced Carriers' Exhibit No. 106, which shows the cost of the carriers' plan, not including the Pacific Electric expenditure, as compared with the Hill plan at the Plaza, the estimate being those of the railroad company's engineers in both instances. I find that the cost of the carriers' project is $4,330,000 for the Southern Pacific and Salt Lake new construction, practically all of which, for the purpose of discussion, will be attributed to grade crossing elimination, whereas, the Santa Fe new construction will be properly attributable to station improvement. On the Hill plan estimate, as given in Carriers' Exhibit 106, there has been no credit allowed for the so-called "Wolfskill property". I don't know whether any credit will accrue on that if the Central Station is abandoned. But assuming that the credit did accrue, I think it would be $1,834,400. Deducting that from the new money cost of the Hill Station along with the projects shown in Col- [fol. 465] umn C, would make the new money cost, net, $11,791,000 as compared with $5,512,000 under the carriers' proposal. Assuming that this $11,791,000 net new money expenditure is necessary at the Hill Plaza plan, the difference between $4,330,000, the carriers' cost of eliminating grade crossings, and that sum represent the cost that is properly chargeable to the consummation of the union station project. That difference would be $6,278,000. The carriers could eliminate these grade crossings for $4,330,-

000 under their plan. So I assume that the same amount of money needed for the Hill plan should be charged to grade crossing elimination and the balance, $6,278,000, of what I call net new money, is chargeable to the union station project (Tr. 5138-5139).

I cannot find that the public gets much of anything in the way of benefits out of the expenditure of $6,278,000 for a union station in Los Angeles (Tr. 5140). The grade crossing problem not only in this city, but in the state and throughout the country, is one of the big problems. We seem to be creating grade crossings much faster than we eliminate them (Tr. 5146).

GEORGE S. HILL, witness recalled on behalf of the Commission, testified as follows:

I do not desire to make any changes in my estimate of the costs of carrying the Commission's Plaza plan, set forth on its Exhibit 4-B, into effect in view of the criticisms which have been made of my estimates by Mr. Jaekle in Carriers' Exhibit 90. Although there may be some minor items which may be low by small amounts, I consider the estimate taken as a whole, is large enough to build an adequate union station on the site indicated. As an example of why I consider Mr. Jaekle's figures too high, I would cite the station building. I believe Mr. Jaekle's figures are too high both as to the cubic contents and the units used. In my estimates the total allowance made for the station building is $1,500,000 plus 27%, making a total of $1,905,000. The foot bridge and other incidental items are included with the station building. Moreover, I testi- [fol. 466] fied before the Interstate Commerce Commission that the unit prices of 50¢ and 30¢ included contingencies of 25%, but Mr. Jaekle has added another 27% to these units (Tr. 5328-5329). My cost estimates include 15 per cent for contingencies (Tr. 5345).

A. G. MOTT, witness recalled on behalf of California Railroad Commission, testified as follows:

Thereupon there was offered and admitted in evidence California Railroad Commission Exhibit 56, being entitled:

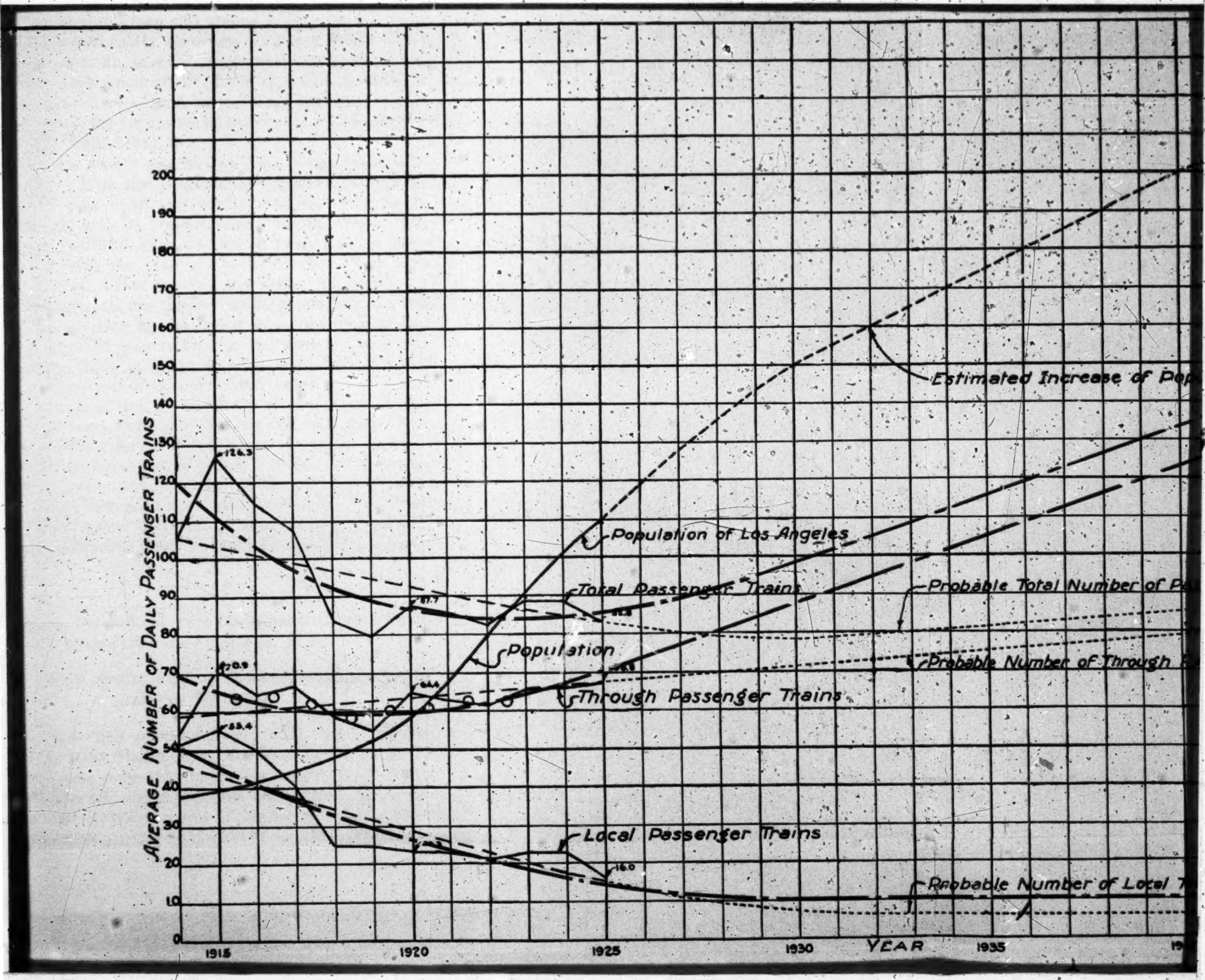
"Chart Showing Increase of Population and Trend of Passenger Traffic on all Steam Lines in Los Angeles", which is in the following form (Tr. 5421):

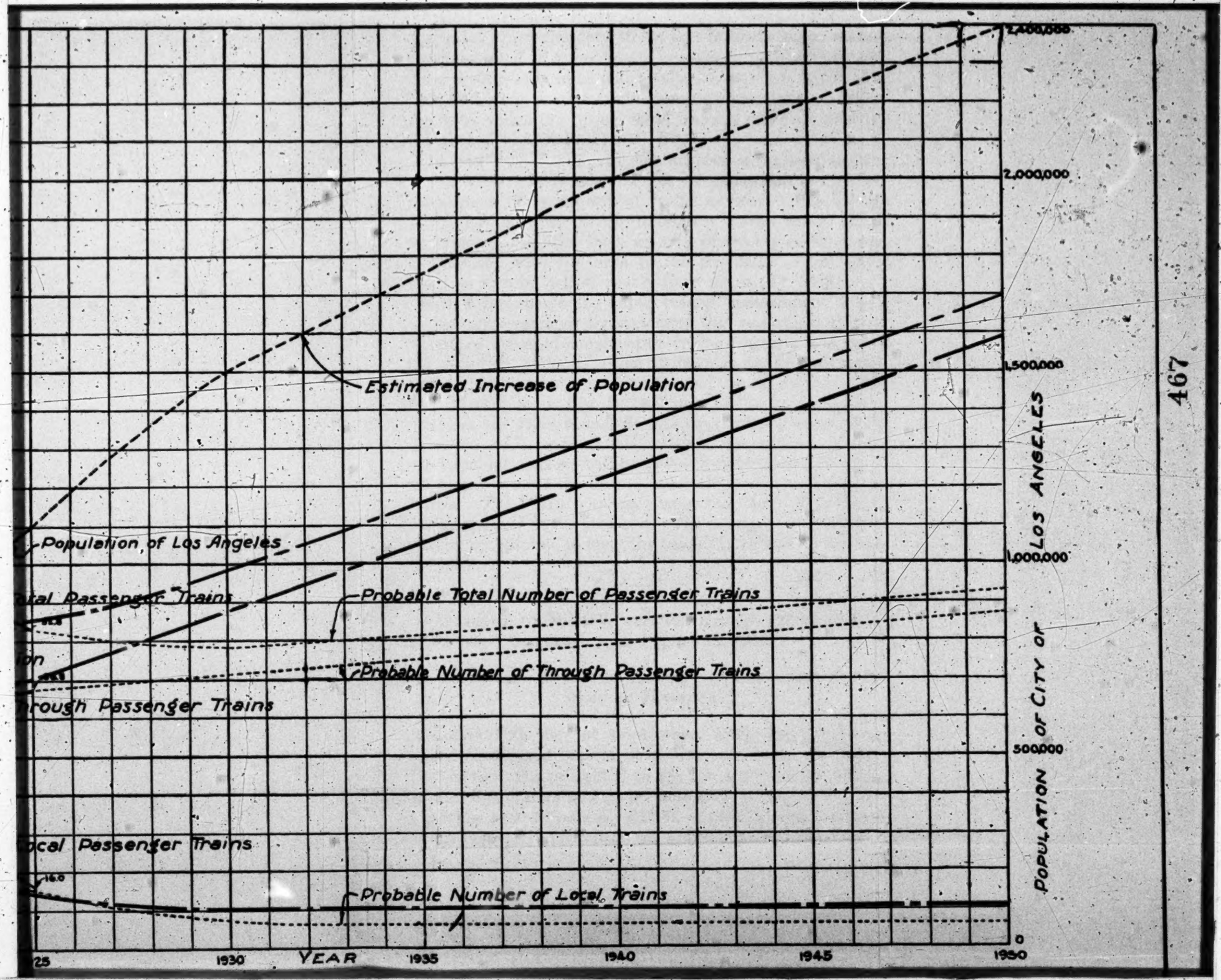
(Here follows Commission Exhibit No. 56, side folio 467)

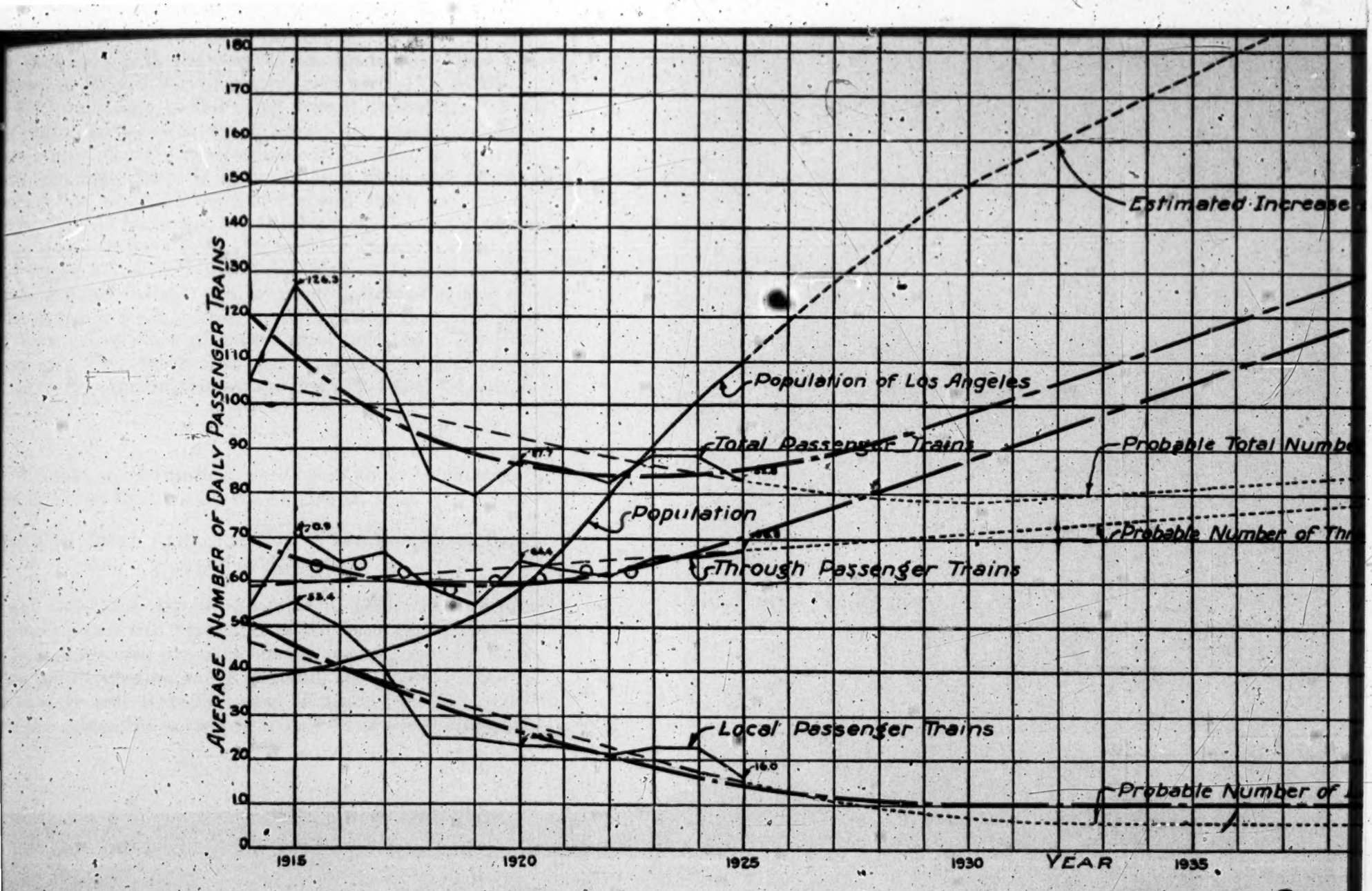
[fol. 468] My best judgment as to the expectancy of future railroad traffic in Los Angeles based upon past trends is represented by the lines which I have superimposed upon Mr. Jaekle's exhibit, colored in red. These lines thus shown on Railroad Commission's Exhibit 56 indicate a total of 98 trains will be operated by 1930 and a total of 170 trains by 1950 (Tr. 5421).

Mr. Burckhalter, in his testimony, pointed out that so far as this problem is a grade crossing problem, the Southern Pacific's proposal, at an expense admitted by his engineers to be something over four million dollars, will eliminate the grade crossing situation complaint all along Alameda Street. He apparently holds the view that any expense incurred over and above this amount under any plan whatsoever is an expense which should be properly chargeable to the provision of station facilities. If the estimates of cost for the whole plan prepared by the Commission's engineers are correct, and I believe them to be so, the investment under the Hill plan for a union station as a station, will amount to $9,175,603, less than $4,330,281 referred to by Mr. Burckhalter for grade crossings, leaving only $4,845,322 for the provision of station facilities, which compares with the investment under the carriers' plan of $11,326,943, less the grade crossing elimination feature of $4,330,281, or $6,996,662 that will result for station facilities themselves under the carriers' plan. It thus appears from Mr. Burckhalter's point of view that the carriers' plan, in addition to all the other disadvantages it may have, will place a burden on the people of paying a return on an excess investment for station facilities amounting to over $2,000,000, over and above the cost of a union station located as shown in Railroad Commission Exhibit 4-B in the Plaza area (Tr. 5422-5423).

In considering the matter of the adequacy of the Plaza site, there should be taken into consideration its size and its shape and the possibility of future expansion. The


AVERAGE NUMBER OF DAILY PASSENGER TRAINS
YEAR
1915
1920
1925
1930
1935
Estimated Increase of Pop
Population of Los Angeles
Total Passenger Trains
Probable Total Number of Pa
Population
Probable Number of Through
Through Passenger Trains
Local Passenger Trains
Probable Number of Local T
124.3
70.9
53.4
16.0


2,500,000
2,000,000
1,500,000
1,000,000
500,000
0
POPULATION OF CITY OF LOS ANGELES
Estimated Increase of Population
Population of Los Angeles
Probable Total Number of Passenger Trains
Probable Number of Through Passenger Trains
Probable Number of Local Trains
16.0
1925
1930
YEAR
1935
1940
1945
1950
467



NOTE

O FOUR YEAR AVERAGES

CALIFORNIA RAILROAD COMMISSION

EXHIBIT 56

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Ex

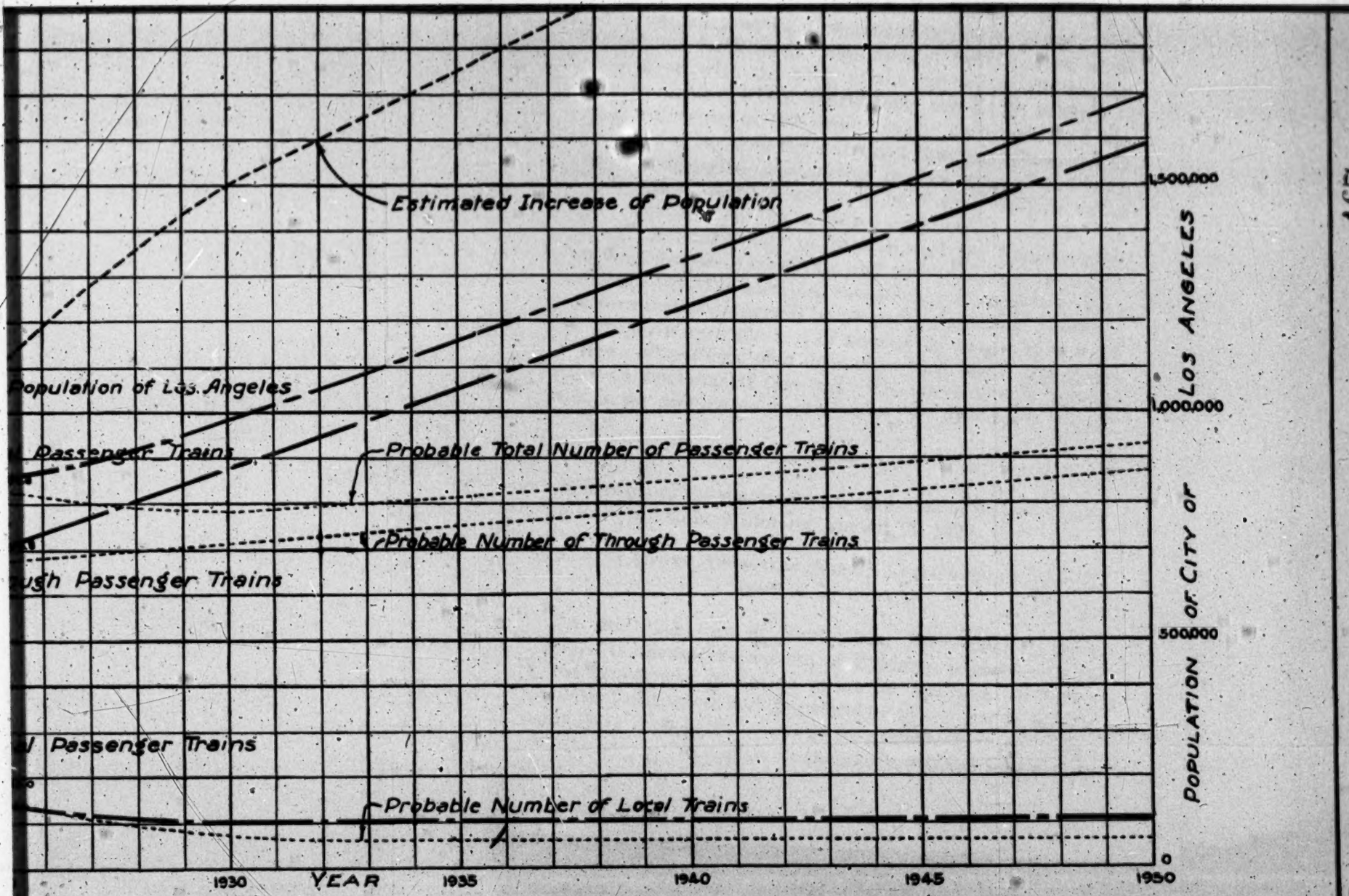
CHART SHOWING

TREND OF PASSE

LINES

S

SHOWING AL



467

SOUTHERN PACIFIC CO.

Exhibit.....

CHART SHOWING INCREASE OF POPULATION AND TREND OF PASSENGER TRAFFIC ON ALL STEAM LINES IN LOS ANGELES.

SUPPLEMENTAL CHART
SHOWING ALTERNATE LINES OF FORECAST

RAILROAD COMMISSION
EXHIBIT 56

[fol. 469] particular Plaza site shown in Exhibit 4-B is of an area of approximately 40 acres. It has a shape which is well adapted to an adequate passenger terminal layout. It has certain area upon which future expansion could take place, and other carrier lands immediately adjacent to that area upon which the future could be even more adequately protected (Tr. 5427-5428).

The Southern Pacific site has an area of approximately sixteen acres. It is not possible of expansion except by relocation of very important traffic arteries. The Santa Fe site has an area of approximately eleven acres. The two separate facilities have an area of twenty-seven acres as compared with the area in the particular Plaza plan shown on Exhibit 4-B of nearly forty acres (Tr. 5428).

With reference to the rapid transit accessibility, I see no reason for revising my statement that regardless of any temporary elevated construction in the westerly and easterly direction, there is going to be a main link of rapid transit development on a north and south axis in this city. If that main link or backbone of the rapid transit plan does not have favorable and convenient contact with the steam railroad terminal facilities, we cannot say that such terminal stations will be properly located or that they will properly meet the test of accessibility from that point of view. The Plaza plan does meet that test. The Plaza area as a whole meets that test. The carriers' plan utterly fails, in my opinion, to meet the test (Tr. 5430-5431, August 11, 1926).

Whereupon, the matters were taken under submission by the Railroad Commission on August 11, 1926.

[fol. 470] ORDER APPROVING AGREED AND CONDENSED STATEMENT OF EVIDENCE

On this 12th day of September, 1930, the foregoing Agreed Condensed Statement of Evidence in the above entitled causes was presented to me for approval by Solicitors for Petitioners and Appellants and Attorneys for Respondents and Appellees, and it appearing that counsel for the respective parties to the above entitled causes have

executed a stipulation contained herein agreeing upon said Agreed Condensed Statement of Evidence, I now find said statement to be true, complete and properly prepared and order said statement to be filed in the Clerk's office and become a part of the record for the purposes of the appeals herein.

William H. Waste, Chief Justice Supreme Court of the State of California.

[fols. 471 & 472] "Stipulation and Order dated August 18, 1930, in S. F. No. 13056, S. F. No. 13057 and S. F. No. 13058, enlarging and extending time to docket causes and to file record on appeal; omitted in printing."

[fol. 473] In Supreme Court of California.

Clerk's Certificate

I, B. Grant Taylor, Clerk of the Supreme Court of the State of California, do hereby certify that the above and foregoing is a true, full, correct and complete transcript of the record, assignment of errors and proceedings had in the causes numbered S. F. No. 13056, S. F. No. 13057 and S. F. No. 13058, wherein Atchison, Topeka & Santa Fe Railway Company; and Los Angeles and Salt Lake Railroad Company; and Southern Pacific Company and Southern Pacific Railroad Company; are respectively petitioners and the Railroad Commission of the State of California and its members, Leon O. Whitsell, C. L. Seavey, Ezra W. De Coto, Thomas S. Louttit and W. J. Carr, are respondents, as the same were designated and condensed by the stipulations of counsel except that the following items in the Joint Præcipe for Transcript of Record and Stipulation:—Item 17, Application of Southern Pacific Company for rehearing on Decision 18593, filed with the Railroad Commission July 16, 1927; Item 18, Application of Los Angeles and Salt Lake Railroad Company for rehearing on Decision 18593, filed with the Railroad Commission July 16, 1927; Item 19, Application of the Atchison, Topeka & Santa Fe Railway Com-

pany for rehearing on Decision 18593, filed with the Railroad Commission on July 21, 1927, have not been set forth separately above because they are each set out and quoted in full in the respective petitions for writs of review, to wit: Item 22, Petition of Southern Pacific Company and Southern Pacific Railroad Company for a writ of review, filed in the Supreme Court of the State of California on the 19th day of June, 1928 (omitting exhibits); Item 23, Petition of Atchison, Topeka & Santa Fe Railway Company for a writ of review, filed in the Supreme Court of the State of California on the 19th day of June, 1928, (omitting exhibits); Item 24, Petition of Los Angeles and [fol. 474] Salt Lake Railroad Company for a writ of review, filed in the Supreme Court of the State of California on the 19th day of June, 1928, (omitting exhibits), and, therefore, said applications which are on file in my office, are set out in full in this certified record.

I further certify that said transcript comprises all the several proceedings, files, writs, opinions, orders and decrees and other papers designated by counsel for the respective parties in their Joint Præcipe for Transcript of Record and Stipulation as being necessary for a hearing and determining of said causes by the Honorable, The Supreme Court of the United States.

Witness my hand officially and the seal of said Court at San Francisco the 16th day of September, A. D. 1930.

B. Grant Taylor, Clerk, by Isadore Erb, Deputy Clerk. (Seal Supreme Court of California.)

[fol. 475] IN SUPREME COURT OF THE UNITED STATES

STATEMENT OF POINTS UPON WHICH APPELLANTS INTEND TO RELY AND STIPULATION AS TO PRINTING—Filed Oct. 1, 1930

Come now appellants and adopt their several Assignments of Errors as their Statements of the Points to be Relied upon in these Cases.

Appellants represent that it is necessary for the con- [fols. 476 & 477] sideration of these causes that all of the

record filed in this Court be printed, except those portions thereof stipulated to be omitted in the Stipulation Covering Printing of Record between the parties, filed concurrently herewith, provided the Clerk in printing the transcript of record insert in lieu of the matters omitted the explanatory notes appearing in said stipulation; otherwise, all of the record should be printed.

Dated September 26, 1930.

Robert Brennan, E. W. Camp, A. S. Halsted, Frank Karr, C. W. Durbrow, Attorneys for Appellants.

Due service and receipt of a copy of the within Statement of Points Upon Which Appellants Intend to Rely and Designation As To Printing is hereby admitted this 26th day of September, 1930.

Arthur T. George, Ira H. Rowell, Roderick B. Cassidy, Attorneys for Appellees.

[fol. 478] STIPULATION COVERING PRINTING OF RECORD

It is hereby stipulated by and between the parties to the above entitled causes that the whole of the record on appeal [fol. 479] in said causes shall be printed, except the following portions thereof:

1. (a) Præcipe Item 17—Application of the Southern Pacific Company for Rehearing on Decision 18593 filed with the Railroad Commission July 16, 1927, S. F. No. 13058.

(b) Præcipe Item 18—Application of Los Angeles & Salt Lake Railroad Company for Rehearing on Decision 18593 filed with the Railroad Commission July 16, 1927, S. F. No. 13057.

(c) Præcipe Item 19—Application of the Atchison, Topeka & Santa Fe Railway Company for Rehearing on Decision 18593 filed with the Railroad Commission July 21, 1927, S. F. No. 13056.

Print in lieu thereof the following statement:

"Applications for Rehearing to California Railroad Commission of Decision 18593—The three applications for re-

hearing mentioned in Præcipe Items 17, 18 and 19 are set out and quoted in full in the respective petitions for writs of review filed by each of said appellants in the Supreme Court of the State of California on the 19th day of June 1928, S. F. 13056, S. F. No. 13057, and S. F. No. 13058 and printed in full therein in the certified record".

2. (a) Præcipe Item 23—Petition of Atchison, Topeka & Santa Fe Railway Company for a Writ of Review, filed in the Supreme Court of the State of California on the 19th day of June, 1928.

(b) Præcipe Item 24—Petition of Los Angeles & Salt Lake Railroad Company for a writ of Review, filed in the Supreme Court of the State of California on the 19th day of June, 1928.

Insert the following note in lieu thereof:

"Petitions of Atchison, Topeka & Santa Fe Railway Company for Writ of Review, S. F. No. 13056, and of Los An- [fol. 480] geles & Salt Lake Railroad Company for Writ of Review, S. F. No. 13057, omitted in printing because they are substantially the same as Petition of Southern Pacific Company et al for Writ of Review, S. F. No. 13058."

3. (a) Præcipe Item 26—Writ of Review issued out of the Supreme Court of the State of California upon petition of Atchison, Topeka & Santa Fe Railway Company dated July 7, 1928, showing service on Carl I. Wheat July 7, 1928.

(b) Præcipe Item 27—Writ of Review issued out of the Supreme Court of the State of California upon petition of Los Angeles & Salt Lake Railroad Company dated July 7, 1928, showing service on Carl I. Wheat July 7, 1928.

In lieu thereof print this statement:

"Writs of Review, S. F. No. 13056 and S. F. No. 13057, are substantially identical as to form and substance as the Writ of Review issued out of the Supreme Court of the State of California upon the petition of Southern Pacific Company et al. dated July 7, 1928, S. F. No. 13058; omitted in printing."

4. (a) Præcipe Item 34—Remittitur issued out of the Supreme Court of the State of California dated June 27, 1930, in Los Angeles & Salt Lake Railroad Company v. Railroad Commission of the State of California, S. F. No. 13057.

(b) Præcipe Item 35—Remitittur issued out of the Supreme Court of the State of California dated June 27, 1930, in Southern Pacific Company et al. v. Railroad Commission of the State of California, S. F. No. 13058.

In lieu thereof print the following note:

"Remittiturs, S. F. No. 13057 and S. F. No. 13058; omitted in printing because they are substantially the same as in S. F. No. 13056."

[fol. 481] 5. (a) Præcipe Item 37—Petition for Appeal by Los Angeles & Salt Lake Railroad Company S. F. No. 13057.

(b) Præcipe Item 38—Petition for Appeal by Southern Pacific Company et al., S. F. No. 13058.

Insert the following note in lieu thereof:

"Petitions for appeal, S. F. No. 13057 and S. F. No. 13058; omitted in printing because they are substantially the same as in S. F. No. 13056."

6. (a) Præcipe Item 40—Assignment of Errors of Los Angeles & Salt Lake Railroad Company in S. F. No. 13057, and

(b) Præcipe Item 41—Assignment of Errors of Southern Pacific Company et al. in S. F. No. 13058.

Except that paragraph XX of the Assignment of Errors of Los Angeles & Salt Lake Railroad Company in S. F. No. 13057, and paragraph XX of the Assignment of Errors of Southern Pacific Company et al. in S. F. No. 13058, shall be printed, which said paragraphs XX read as follows:

S. F. No. 13057, paragraph XX;—

"The Court erred in holding that the order of the Commission requiring petitioner to abandon the use of its existing passenger station and station grounds in the City of Los Angeles, California, and join other carriers in constructing, maintaining and operating a union passenger sta-

tion at the Plaza Site in the said City, for the purpose of removing the trains of the Southern Pacific Company from Alameda Street in the said City, with which removal it has no concern, is not a taking of petitioner's property without due process of law and a denying to your petitioner the equal protection of the law within the meaning of the Fourteenth Amendment to the Constitution of the United States."

S. F. No. 13058, paragraph XX:

[fol. 482] "The Court erred in making and entering its judgment affirming the order of the Railroad Commission of the State of California requiring petitioners to abandon an adequate passenger station and facilities and join with other carriers in acquiring new property upon which to construct a union passenger station for the purpose of eliminating certain grade crossings in said City of Los Angeles and for the purpose of providing other carriers with adequate passenger terminal depots, in that said order deprives petitioners of their property without due process of law and takes their property for public use without compensation and is, therefore, in contravention of and repugnant to the Fourteenth Amendment to the Constitution of the United States."

In lieu of the ommissions in printing, insert the following:

"Assignment of Errors of Los Angeles & Salt Lake Railroad Company in S. F. No. 13057 omitted in printing, except paragraph XX, for the reason that the same is substantially identical with the Assignment of Errors of Atchison, Topeka & Santa Fe Railway Company in S. F. No. 13056.

Assignment of Errors of Southern Pacific Company et al., in S. F. No. 13058 omitted in printing, except paragraph No. XX thereof, for the reason that the same are substantially identical with the Assignment of Errors of Atchison, Topeka & Santa Fe Railway Company in S. F. No. 13056.

7. (a) Præcipe Item 43—Order allowing appeal by Los Angeles & Salt Lake Railroad Company, S. F. No. 13057.

(b) Præcipe Item 44—Order allowing appeal by Southern Pacific Company et al., S. F. No. 13058.

Insert the following note in lieu thereof:

"Orders allowing appeal, S. F. No. 13057 and S. F. No. 13058; omitted in printing because each is substantially [fol. 483] the same as in S. F. No. 13056."

8. (a) Præcipe Item 46—Citation, with proof of service and all endorsements thereon, by Los Angeles & Salt Lake Railroad Company, S. F. No. 13057.

(b) Præcipe Item 47—Citation, with proof of service and all endorsements thereon, by Southern Pacific Company et al., S. F. No. 13058.

Insert the following note in lieu thereof:

"Citations, S. F. No. 13057 and S. F. No. 13058; omitted in printing because each is substantially the same as in S. F. No. 13056."

9. (a) Præcipe Item 48—Supersedeas Bond on Appeal, by Atchison, Topeka & Santa Fe Railway Company, S. F. No. 13056.

(b) Præcipe Item 49—Supersedeas Bond on Appeal, by Los Angeles & Salt Lake Railroad Company, S. F. No. 13057.

(c) Præcipe Item 50—Supersedeas Bond on Appeal, by Southern Pacific Company et al., S. F. No. 13058.

Insert the following note in lieu thereof:

"Supersedeas Bonds on Appeal, S. F. No. 13056, S. F. No. 13057 and S. F. No. 13058, each for $500, each approved and filed on June 26, 1930, omitted in printing."

10. Præcipe Item 52—Stipulation and Order of August 18, 1930, extending time to docket cause and file record on appeal.

Insert the following note in lieu thereof:

"Stipulation and Order dated August 18, 1930, in S. F. No. 13056, S. F. No. 13057 and S. F. No. 13058, enlarging and extending time to docket causes and to file record on appeal; omitted in printing."

[fols. 484 & 485] 11. It is further stipulated that the original exhibits, to-wit: California Railroad Commission Ex-

hibits Nos. 1, 49, City of Los Angeles Exhibits Nos. 5, 13, 14, 15, 16, and Carriers' Exhibits Nos. 36, 80 and 88, described in Item 54 of the Præcipe, and certified by the Clerk of the Supreme Court of the State of California separately and forwarded to the Clerk of the United States Supreme Court, shall be omitted in printing, but may be referred to by the various parties to the appeal and their counsel, and by the court, with the same force and effect as if contained in the printed record.

12. It is further stipulated that all titles and verifications may be omitted in printing except as follows:

The titles on Items 1, 2, 10, 16, 20 and 30 of the Præcipe shall be printed.

Dated September 26th, 1930.

Robert Brennan, E. W. Camp, A. S. Halsted, Frank Karr, C. W. Durbrow, Attorneys for Appellants. Arthur T. George, Ira H. Rowell, Roderick B. Cassidy, Attorneys for Appellees.

[fol. 486] [File endorsement omitted.]

Endorsed on cover: File No. 35,382, 35,393, 35,394. California Supreme Court. Term No. 470. The Atchison, Topeka and Santa Fe Railway Company, appellant, vs. Railroad Commission of the State of California and Leon O. Whitsell, C. L. Seavey, et al., etc. Term No. 471. Los Angeles & Salt Lake Railroad Company, appellant, vs. Railroad Commission of the State of California and Leon O. Whitsell, C. L. Seavey, et al., etc. Term No. 472. Southern Pacific Company and Southern Pacific Railroad Company, appellants, vs. Railroad Commission of the State of California and Leon O. Whitsell, C. L. Seavey, et al., etc. Filed September 22, 1930. File Nos. 35,392, 35,393, 35,394.

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1930

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CHARLES ELMORE CR
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THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation,
Appellant,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and LEON O. WHITSELL, C. L. SEAVEY, EZRA W. DECOTO, THOMAS S. LOUTTIT and W. J. CARR, as members of and constituting said Railroad Commission,
Appellees.

No. 470

LOS ANGELES & SALT LAKE RAILROAD COMPANY, a corporation,
Appellant,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and LEON O. WHITSELL, C. L. SEAVEY, EZRA W. DECOTO, THOMAS S. LOUTTIT and W. J. CARR, as members of and constituting said Railroad Commission,
Appellees.

No. 471

SOUTHERN PACIFIC COMPANY, a corporation, and SOUTHERN PACIFIC RAILROAD COMPANY, a corporation,
Appellants,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and LEON O. WHITSELL, C. L. SEAVEY, EZRA W. DECOTO, THOMAS S. LOUTTIT and W. J. CARR, as members of and constituting said Railroad Commission,
Appellees.

No. 472

Statement of Appellants Respecting Jurisdiction of Court to Review Judgment Involved Herein.

ROBERT BRENNAN,
E. W. CAMP,
Kerckhoff Building,
6th and Main Streets,
Los Angeles, California,

FRANK KARR,
670 Pacific Electric Building,
6th and Main Streets,
Los Angeles, California,

A. S. HALSTED,
424 Pacific Electric Building,
6th and Main Streets,
Los Angeles, California,

C. W. DURBROW,
65 Market Street,
San Francisco, California,

Attorneys for Appellants.

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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1930

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation, *Appellant*, vs. RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and LEON O. WHITSELL, C. L. SEAVEY, EZRA W. DECOTO, THOMAS S. LOUTTIT and W. J. CARR, as members of and constituting said Railroad Commission, *Appellees.*	No. 470
LOS ANGELES & SALT LAKE RAILROAD COMPANY, a corporation, *Appellant*, vs. RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and LEON O. WHITSELL, C. L. SEAVEY, EZRA W. DECOTO, THOMAS S. LOUTTIT and W. J. CARR, as members of and constituting said Railroad Commission, *Appellees.*	No. 471
SOUTHERN PACIFIC COMPANY, a corporation, and SOUTHERN PACIFIC RAILROAD COMPANY, a corporation, *Appellants*, vs. RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and LEON O. WHITSELL, C. L. SEAVEY, EZRA W. DECOTO, THOMAS S. LOUTTIT and W. J. CARR, as members of and constituting said Railroad Commission, *Appellees.*	No. 472

Statement of Appellants Respecting Jurisdiction of Court to Review Judgment Involved Herein.

May it please the court:

Pursuant to paragraph 1 of rule 12 of this court, appellants present the following statement as to the basis on which this court has jurisdiction to review the judgment of the Supreme Court of the state of California involved herein.

A. Reference to Statutory Provisions Sustaining Jurisdiction.

(Note: The record has not been printed. All reference to pages of record are to the paging of the record certified by the clerk of the Supreme Court of California and on file in this court.)

These are appeals by The Atchison, Topeka and Santa Fe Railway Company, and Los Angeles & Salt Lake Railroad Company, and Southern Pacific Company and Southern Pacific Railroad Company (hereinafter called appellants), under section 237(a) of the Judicial Code, (as amended by the Act of February 13, 1925, c. 229, 43 Stat. 937, the Act of January 31, 1928, c. 14, 45 Stat. 54, and the Act of April 26, 1928, c. 440, 45 Stat. 466) from a final judgment [Record pp. 259-274], in suits in the highest court of a state, to wit, the Supreme Court of the state of California (which suits were therein consolidated [Record p. 258]), in which suits there was drawn in question the validity of a certain order, legislative in character, of the Railroad Commission of the state of California and of a statute of said state, on the ground of their being repugnant to

the constitution of the United States, particularly the Fourteenth Amendment thereof, and the Commerce Clause, Article I, section 8, clause 3, and on the ground of their being repugnant to the laws of the United States, namely, paragraphs 18, 19, 20 and 21 of section 1 and paragraphs 3 and 4 of section 3 of the Interstate Commerce Act as amended by Transportation Act, 1920 (41 Sta. L. 474; U. S. Code Title 49, section 1, section 3).

B. Date of Decree and Date of Application for Appeal.

The judgment sought to be reviewed was entered on the 27th day of May, 1930 [Record pp. 259-274]. Petitions for appeal [Record pp. 310-319] were filed and presented by appellants, and orders allowing appeal were made and entered on the 26th day of June, 1930 [Record pp. 349-354]. The time within which to file the record and docket the causes was, by stipulation and order extended to September 24, 1930 [Record pp. 471-472].

C. Statement of Nature of Case and of Rulings Below Showing It to Be Within Jurisdictional Provisions Relied Upon.

The Railroad Commission of the state of California is a commission created by sections 22 and 23 of article XII of the California constitution as amended respectively October 10, 1911 and November 3, 1914. By those sections the legislature is authorized to confer additional powers upon the Railroad Commission and the authority of the legislature to confer such additional powers is expressly declared to be plenary and

unlimited by any other provision of the California constitution. (See Appendix, pp. 1 and 4.)

In proceedings before said commission wherein appellants were defendants, said commission, claiming jurisdiction under a statute of said state, known and designated as the "Public Utilities Act" (Stats. 1915, Chap. 91, p. 115; Sections 13(b), 22(a), 30, 31, and particularly Section 36 thereof, see Appendix page 6), made a decision and order, No. 18593 [Record pp. 155-171] on July 8, 1927, commanding appellants to construct, and thereafter operate a union passenger station within that portion of the city of Los Angeles bounded by Commercial street, North Main street, Redondo street, Alhambra avenue, and the Los Angeles river, together with such tracks, connections, and all other terminal facilities and additions, extensions, improvements and changes in the existing railroad facilities of said companies as may be reasonably necessary and incidental to the use of said union passenger station, at a cost of approximately ten million dollars ($10,000,000.00) in substantial compliance with the plan outlined in commission's Exhibit 4-B [Record p. 428].

Said decision and order commanded the appellant Southern Pacific Company, upon and after the construction of said station, to abandon and discontinue passenger and freight train service, excepting only industrial freight switching over that portion of its railroad between College street and East Fifteenth street, inclusive, in the city of Los Angeles, (which trackage is about 3 double track miles on Alameda street in said city [Record pp. 384, 386]).

Said decision and order by its necessary force and effect requires appellants:

To abandon their present respective passenger stations and passenger station facilities;

to acquire, hold and use for purposes of a union passenger station in said city upwards of 39 acres of land [Record p. 391];

to construct, maintain and operate on said land upwards of 8 miles of joint station tracks [Record pp. 169-171, Exhibit No. 90, Record pp. 452-455];

to extend their respective main lines to reach said union passenger station and terminal described in said order [Record p. 167] requiring new main line extensions as follows: Southern Pacific Company and Southern Pacific Railroad Company about 1½ double track miles; Los Angeles & Salt Lake Railroad Company about ¼ mile; The Atchison, Topeka and Santa Fe Railway Company about ½ mile [Record p. 386];

to make connections between their respective main line tracks [Record p. 386, Items E, AD, MD2, and M4];

to construct other new trackage as follows: The Atchison, Topeka and Santa Fe Railway Company 5.3 miles of new tracks detailed in Exhibit No. 90 [Record pp. 452-457]; the Southern Pacific Company and Southern Pacific Railroad Company 6.5 miles of new coach yard tracks [Exhibit No. 88—original certified separately; Exhibit 90, Record p. 452; Exhibit 6, Item SP3, Record p. 386];

to jointly use one another's terminal main line tracks [Record pp. 168, 380] as follows: the Southern Pacific passenger trains to reach the

station from the north by joint use of The Atchison, Topeka and Santa Fe Railway Company's main line tracks, about 1½ double track miles, and in freight service to jointly use the main line tracks of Los Angeles & Salt Lake Railroad Company, about 4 double track miles [Record pp. 381, 386], the Southern Pacific passenger trains from the east to reach the station by joint use of Los Angeles & Salt Lake Railroad Company's main line tracks, about ¾ double track miles [Record pp. 380, 386], and an extension thereof to be constructed across the Los Angeles river to the station about ¼ double track miles [Record p. 386]; the Los Angeles & Salt Lake Railroad Company to use about 4 double track miles of the main line of the tracks of The Atchison, Topeka and Santa Fe Railway Company [Record pp. 381, 386].

If such joint use of main line tracks should not be made, extensions of main line tracks of an equivalent mileage are by the necessary force and effect of the commission's said decision and order required to be constructed and operated [Record pp. 155-171, 384, 386].

The cost of land so ordered to be acquired and dedicated to public use and of the tracks and buildings so ordered to be constructed, provided joint use of main line tracks should be made as above stated, would be upwards of $10,000,000.00 [Record pp. 166, 452-455].

The three appellants are transcontinental steam railroads [Record p. 12] engaged in interstate transportation of passengers and freight [Record p. 173—

City of Los Angeles Original Exhibit No. 5 certified separately] and handle a large volume of such passenger traffic [Record pp. 403, 404, 405-408].

Following the making of said decision and order appellants Southern Pacific Company and Southern Pacific Railroad Company, and Los Angeles & Salt Lake Railroad Company, on July 16, 1927, and appellant The Atchison, Topeka and Santa Fe Railway Company, on July 21, 1927, filed with said commission applications for rehearing wherein was drawn in question the validity of said order and of said sections of said Public Utilities Act, particularly section 36 (Cal. Stats. 1915, p. 115. See Appendix, p. 7) insofar as they purport to confer jurisdiction on said commission to make said order, on the ground that said sections and said order were repugnant to said Fourteenth Amendment, to said clause 3 of section 8 of article I of the Constitution of the United States, and to paragraphs 15, 18, 19, 20 and 21 of section 1, and to paragraph 4 of section 3, of said Interstate Commerce Act, as amended [Record pp. 198-209; 214-223; 230-238].

Said applications for rehearing were denied on May 26, 1928 [Record pp. 189-190]. Thereupon, on June 19, 1928, appellants filed in said Supreme Court of California petitions for writs of review to review and annul said order and in said petitions for review set out the same claims as they had set out in said petitions for rehearing as to the invalidity of said sections of said Public Utilities Act, particularly section 36,

and of said order [Record pp. 191-211; 212-225; 226-240].

The court granted said petitions and writs of review issued July 7, 1928 [Record pp. 241-254] and return was made by the Railroad Commission of the state of California on August 6, 1928 [Record pp. 255-257]. The cases were consolidated [Record p. 258].

The proceedings in the Supreme Court of the state of California were original proceedings. They were authorized by section 67 of the Public Utilities Act of said state, which section of said act provides that only the Supreme Court of the state of California shall have jurisdiction to review, reverse, correct or annul any order or decision of said commission (Statutes of California 1915, Chapter 91, p. 115. See Appendix, p. 9).

Thereupon said court refused to annul, but on the contrary, on May 27, 1930, affirmed said order of said commission, and by its judgment entered on said May 27, 1930, held that said sections of said Public Utilities Act and said order were not and that neither of them was repugnant to said constitution or laws of the United States or to any of them [Record pp. 259-274]. Said judgment of the Supreme Court of California held that the Interstate Commerce Commission, having issued certain certificates of convenience and necessity, the Railroad Commission of said state thereupon had power to order appellants to construct the works and do the things for which the Interstate Commerce Commission had so issued certificates [Record pp. 264-265,

274]; thus in effect converting and transforming a permission from the federal government into an order by the state government; thereby regulating interstate commerce in a particular in which Congress had already exercised its power to regulate such commerce; contrary to said commerce clause and to said paragraphs 18, 19, 20 and 21 of section 1, and paragraphs 3 and 4 of section 3 of the Interstate Commerce Act as amended [Record pp. 279-281 and p. 306].

(*Note—The certificates last above mentioned were issued over the protest and against the will of the appellants herein in a certain adverse proceeding in which appellants were defendants* [*Record pp. 172-188; see also Interstate Commerce Commission v. United States, ex rel. City of Los Angeles, 280 U. S. 52*]).

Thereupon, on June 16, 1930, appellants filed in said court a joint petition for rehearing, wherein was drawn in question the validity of said sections, particularly said section 36 (Cal. Stats. 1915, p. 115) of said Public Utilities Act, and of said order, on the ground of their being repugnant to said amendment to the constitution, and to said clause 3 of section 8 of article I thereof, and to paragraphs 18, 19, 20 and 21 of said section 1, and to paragraphs 3 and 4 of said section 3, of said Interstate Commerce Act, as amended [Record pp. 275-305]. Said petition was denied June 26, 1930 [Record p. 306]. The judgment of the Supreme Court of

the state of California entered on May 27, 1930, was, by virtue of the provisions of said section 67 of the Public Utilities Act of said state, a judgment in these suits in the highest court of the state of California in which a decision in said suits could be had, and constitutes a final judgment of said court within the meaning of section 237 of the Judicial Code (U. S. Code Title 28, section 344).

Whereupon appellants filed in said state court, on June 26, 1930, petitions for leave to appeal to this court, and filed with said petitions their several assignments of error, and in said petitions drew in question the validity of said sections of said Public Utilities Act, particularly said section 36 thereof, and said order, as being repugnant to said provisions of the constitution and said provisions of the Interstate Commerce Act [Record pp. 310-313; 314-316; 317-319], and in said assignments of errors charged error in said decision of said state court in holding in favor of the validity of said sections of said Public Utilities Act, particularly section 36 thereof, and of said order, as not being repugnant to said provisions of the constituion, or either of them, or to said provisions of the Interstate Commerce Act, or to any of them [Record pp. 320-348]; and on said date orders were issued allowing appeals [Record 349-354], citations duly issued, served and filed [Record pp. 355-357], and bonds on appeal were filed by appellants on said date [Record pp. 358-369].

And for the purpose of these appeals appellants by document, filed with the clerk of this court, October 1st, 1930, within the time prescribed by paragraph 9 of rule 13, adopted said assignments of errors as the statement of points to be relied upon by them in this court in these proceedings.

D. Cases Believed to Sustain Jurisdiction.

The following decisions of this court are believed to sustain jurisdiction of these appeals:

United Railways and Electric Co. of Baltimore v. Harold E. West, 280 U. S. 234;

New York ex rel. Bryant v. Zimmerman, 278 U. S. 63;

John P. King Mfg. Co. v. City Council of Augusta, 277 U. S. 100;

Sultan Railway & Timber Co. v. Department of Labor and Industries of the State of Washington, et al. and

Eclipse Mill Co. v. Department of Labor and Industries of the State of Washington, et al., 277 U. S. 135;

Northern Pacific Railway Co., et al. v. Department of Public Works of Washington, 268 U. S. 38;

Railroad Commission v. Southern Pacific Co., 264 U. S. 331.

We respectfully submit that this court has jurisdiction of these appeals by virtue of section 237 of the Judicial Code, as amended by Act of February 13, 1925

(43 Stat. at L. 937, Chap. 229, Sec. 1, U. S. C. Title 28, Sec. 344).

Respectfully submitted,

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E. W. CAMP,
A. S. HALSTED,
FRANK KARR,
C. W. DURBROW,
Attorneys for Appellants.

APPENDIX.

Extracts From the Constitution of the State of California, Sections 22 and 23, Article XII.

Sec. 22. There is hereby created a railroad commission which shall consist of five members and which shall be known as the railroad commission of the state of California. The commission shall be appointed by the governor from the state at large; provided, that the legislature, in its discretion, may divide the state into districts for the purpose of such appointments, said districts to be as nearly equal in population as practicable; and provided, further, that the three commissioners in office at the time this section takes effect shall serve out the term for which they were elected, and that two additional commissioners shall be appointed by the governor immediately after the adoption of this section, to hold office during the same term. Upon the expiration of said term, the term of office of each commissioner thereafter shall be six years, except the commissioners first appointed hereunder after such expiration, one of whom shall be appointed to hold office until January 1, 1917, two until January 1, 1919, and two until January 1, 1921. Whenever a vacancy in the office of commissioner shall occur, the governor shall forthwith appoint a qualified person to fill the same for the unexpired term. Commisioners appointed for regular terms shall at the beginning of the term for which they are appointed, and those appointed to fill vacancies, shall, immediately upon their appointment, enter upon the duties of their offices. The legislature shall fix the salaries of the commissioners, but pending such action the salaries of the commissioners, their officers and employees shall

remain as now fixed by law. The legislature shall have the power, by a two-thirds vote of all members elected to each house, to remove any one or more of said commissioners from office for dereliction of duty or corruption or incompetency. All of said commissioners shall be qualified electors of this state, and no person in the employ of or holding any official relation to any person, firm or corporation, which said person, firm or corporation is subject to regulation by said railroad commission and no person owning stock or bonds of any such corporation or who is in any manner pecuniarily interested therein, shall be appointed to or hold the office of railroad commissioner. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission. The act of a majority of the commissioners when in session as a board shall be deemed to be the act of the commission; but any investigation, inquiry or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner designated for the purpose by the commission, and every order made by a commissioner so designated, pursuant to such inquiry, investigation or hearing, when approved or confirmed by the commission ordered filed in its office, shall be deemed to be the order of the commission.

Said commission shall have the power to establish rates of charges for the transportation of passengers and freight by railroads and other transportation companies, and no railroad or other transportation company shall charge or demand or collect or receive a greater or less or different compensation for such transportation

of passengers or freight, or for any service in connection therewith, between the points named in any tariff of rates, established by said commission, than the rates fares and charges which are specified in such tariff. The commission shall have the further power to examine books, records and papers of all railroad and other transportation companies; to hear and determine complaints against railroad and other transportation companies; to issue subpoenas and all necessary process and send for persons and papers; and the commission and each of the commissioners shall have the power to administer oaths, take testimony and punish for contempt in the same manner and to the same extent as courts of record; the commission may prescribe a uniform system of accounts to be kept by all railroad and other transportation companies.

No provision of this constitution shall be construed as a limitation upon the authority of the legislature to confer upon the railroad commission additional powers of the same kind or different from those conferred herein which are not inconsistent with the powers conferred upon the railroad commission in this constitution, and the authority of the legislature to confer such additional powers is expressly declared to be plenary and unlimited by any provision of this constitution.

The provisions of this section shall not be construed to repeal in whole or in part any existing law not inconsistent herewith, and the "Railroad Commission Act" of this state approved February 10, 1911, shall be construed with reference to this constitutional provision and any other constitutional provision becoming operative con-

currently herewith. And the said act shall have the same force and effect as if the same had been passed after the adoption of this provision of the constitution and of all other provisions adopted concurrently herewith, except that the three commissioners referred to in said act shall be held and construed to be the five commissioners provided for herein. (Amendment adopted October 10, 1911.)

Sec. 23. Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any commercial railroad, interurban railroad, street railroad, canal, pipe line, plant, or equipment, or any part of such railroad, canal, pipe line, plant, or equipment within this state, for the transportation or conveyance of passengers, or express matter, or freight of any kind, including crude oil or for the transmission of telephone or telegraph messages, or for the production, generation, transmission, delivery or furnishing of heat, light, water or power or for the furnishing of storage or wharfage facilities, either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the railroad commission as may be provided by the legislature, and every class of private corporations, individuals, or associations of individuals hereafter declared by the legislature to be public utilities shall likewise be subject to such control and regulation. The railroad commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the state of California, and to fix the rates to be charged for commodities furnished, or services ren-

dered by public utilities as shall be conferred upon it by the legislature, and the right of the legislature to confer powers upon the railroad commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this constitution. From and after the passage by the legislature of laws conferring powers upon the railroad commission, respecting public utilities, all powers respecting such public utilities vested in boards of supervisors, or municipal councils, or other governing bodies of the several counties, cities and counties, cities and towns, in this state, or in any commission created by law and existing at the time of the passage of such laws, shall cease so far as such powers shall conflict with the powers so conferred upon the railroad commission; *provided, however,* that this section shall not affect such powers of control over public utilities as relate to the making and enforcement of local, police, sanitary and other regulations, other than the fixing of rates, vested in any city and county or incorporated city or town as, at an election to be held pursuant to law, a majority of the qualified electors of such city and county, or incorporated city or town, voting thereon, shall vote to retain, and until such election such powers shall continue unimpaired; but if the vote so taken shall not favor the continuation of such powers they shall thereafter vest in the railroad commission as provided by law; *and provided, further,* that where any such city and county, or incorporated city or town, shall have elected to continue any of its powers to make and enforce such local, police, sanitary and other regulations, other than the fixing of rates, it may, by vote of a majority of its qualified electors voting thereon, thereafter sur-

render such powers to the railroad commission in the manner prescribed by the legislature; *and provided, further,* that this section shall not affect the right of any city and county or incorporated city or town, to grant franchises for public utilities upon the terms and conditions and in the manner prescribed by law. Nothing in this section shall be construed as a limitation upon any power conferred upon the railroad commission by any provision of this constitution now existing or adopted concurrently herewith. (Amendment adopted November 3, 1914.)

Extracts From Public Utilities Act, Statutes of California 1915, Chap. 91, p. 115.

Sec. 13(b). Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable.

Sec. 22(a). Every common carrier shall afford all reasonable, proper and equal facilities for the prompt and efficient interchange and transfer of passengers, tonnage and cars, loaded or empty, between the lines owned, operated, controlled or leased by it and the lines of every other common carrier, and shall make such interchange and transfer promptly without discrimination between shippers, passengers or carriers either as to compensation charged, service rendered or facilities afforded. Every railroad corporation shall receive from every other railroad corporation, at any point of connection, freight cars of proper standard and in proper condition, and shall

haul the same either to destination, if the destination be upon a line owned, operated or controlled by such railroad corporation, or to point of transfer according to route billed, if the destination be upon the line of some other railroad corporation.

Nothing in this section contained shall be construed as in anywise limiting or modifying the duty of a common carrier to establish joint rates, fares and charges for transportation of passengers and property over the lines owned, operated, controlled or leased by it and the lines of other common carriers, nor as in any manner limiting or modifying the power of the commission to require the establishment of such joint rates, fares and charges.

Sec. 30. Every public utility shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the commission in the matters herein specified, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule or regulation by all of its officers, agents and employees.

Sec. 31. The Railroad Commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in the state and to do all things, whether herein specifically designated or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction.

Sec. 36. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find

that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the commission orders the erection of a new structure, it may also fix the site thereof. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the commission has ordered to be erected, require joint action by two or more public utilities, the commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures which each shall bear. If at the expiration of such time such public utilities shall fail to file with the commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the commission shall have authority, after further hearing, to make an

order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured.

Sec. 67. Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the rendition of the decision on rehearing, the applicant may apply to the Supreme Court of this state for a writ of *certiorari* or review (hereinafter referred to as a writ of review) for the purpose of having the lawfulness of the original order or decision or the order or decision on rehearing inquired into and determined. Such writ shall be made returnable not later than thirty days after the date of the issuance thereof, and shall direct the commission to certify its record in the case to the court. On the return day, the cause shall be heard by the Supreme Court, unless for a good reason shown the same be continued. No new or additional evidence may be introduced in the Supreme Court, but the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the constitution of the United States or of the state of California. The findings and conclusions of the commission on questions of fact shall be final and shall not be subject to review; such questions of fact shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimination. The commission and each party to the ac-

tion or proceeding before the commission shall have the right to appear in the review proceeding. Upon the hearing the Supreme Court shall enter judgment either affirming or setting aside the order or decision of the commission. The provisions of the Code of Civil Procedure of this state relating to writs of review shall, so far as applicable and not in conflict with the provisions of this act, apply to proceedings instituted in the Supreme Court under the provisions of this section. No court of this state (except the Supreme Court to the extent herein specified) shall have jurisdiction to review, reverse, correct or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties; *provided*, that the writ of mandamus shall lie from the Supreme Court to the commission in all proper cases.

Due Service and receipt of the within copy of the Statement of Appellants Respecting Jurisdiction of Court to Review Judgment Involved Herein is hereby admitted this ..... day of October, 1930.

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Attorneys for Appellees Railroad Commission of the State of California, and Leon O. Whitsell, C. L. Seavey, Ezra W. Decoto, Thos. S. Louttit, W. J. Carr, as Members of and Constituting the Railroad Commission.

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In the Supreme Court

OF THE

United States

Oct. Term, 1930.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation,
Appellant,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and LEON O. WHITSELL, C. L. SEAVEY, EZRA W. DECOTO, THOMAS S. LOUTTIT and W. J. CARR, as members of and constituting said Railroad Commission,
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SAME.
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SOUTHERN PACIFIC COMPANY, a corporation, and SOUTHERN PACIFIC RAILROAD COMPANY, a corporation,
Appellants,

vs.

SAME.
Appellees.

No. 472

JOINT BRIEF FOR APPELLANTS.

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In the Supreme Court
OF THE
United States
Oct. Term, 1930.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation, *Appellant,* vs. RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and LEON O. WHITSELL, C. L. SEAVEY, EZRA W. DECOTO, THOMAS S. LOUTTIT and W. J. CARR, as members of and constituting said Railroad Commission, *Appellees.*	No. 470
LOS ANGELES & SALT LAKE RAILROAD COMPANY, a corporation, *Appellant,* vs. SAME. *Appellees.*	No. 471
SOUTHERN PACIFIC COMPANY, a corporation, and SOUTHERN PACIFIC RAILROAD COMPANY, a corporation, *Appellants,* vs. SAME. *Appellees.*	No. 472

JOINT BRIEF FOR APPELLANTS.

Appellants will be referred to as the "Railroads" and appellees will be referred to as the "State Commission".

OPINIONS.

The opinion of the Supreme Court of the State of California is reported in *A. T. & S. F. Ry. Co., et al. v. California Railroad Commission, et al.,* 209 Cal. 460, hereinafter referred to as *Second State Court Case,* and included in the Record at pages 184-199.

The opinion and order of the State Commission, directly involved herein, are reported in *Municipal League, et al. v. Southern Pacific Co., et al.,* 30 Opinions of the R. R. Com. of Cal. 151, hereinafter referred to as the *Third State Commission Decision,* and will be found at pages 119-134 of the Record.

Other Opinions Rendered by Commissions and Courts Relating to This Controversy.

The first opinion and order of the State Commission are reported in *Municipal League, et al. v. Southern Pacific Company, et al.,* 19 Opinions of the R. R. Com. of Cal. 740, hereinafter referred to as the *First State Commission Decision* (R. pp. 24-84).

The opinion and order of the State Commission on rehearing are reported in *Municipal League, et al. v. Southern Pacific Co., et al.,* 20 Opinions of the R. R. Com. of Cal. 937, hereinafter referred to as the *Second State Commission Decision* (R. pp. 84-96).

An opinion of the Interstate Commerce Commission is reported in *Los Angeles Passenger Terminal Cases,* 100 I. C. C. 421, hereinafter referred to as

First Federal Commission Decision; an opinion of the Interstate Commerce Commission is reported in *Los Angeles Passenger Terminal Cases,* 142 I. C. C. 489, hereinafter referred to as *Second Federal Commission Decision* (R. pp. 135-156).

An opinion of the Supreme Court of California is reported in *A. T. & S. F. Ry. Co., et al. v. Railroad Commission,* 190 Cal. 214, hereinafter referred to as the *First State Court Case.*

An opinion of this Court is reported in *Railroad Commission of California v. Southern Pacific Company, et al.,* 264 U. S. 331, hereinafter referred to as *First Los Angeles Case;* an opinion of this Court is reported in *Interstate Commerce Commission v. United States, ex rel Los Angeles,* 280 U. S. 52, hereinafter referred to as *Second Los Angeles Case.*

JURISDICTION.

The Railroads, pursuant to Rule 12, Paragraph 1, of this Court, have filed their statement as to jurisdiction and this Court has found December 1, 1930, that probable jurisdiction has been shown (*A. T. & S. F. Ry. Co., et al. v. Railroad Commission, et al.,* U. S. Sup. Ct. Advance Opinions, 75 L. ed. 118).

Statement of the Case.

These appeals are from judgments rendered by the Supreme Court of the State of California in three consolidated cases wherein the State Court affirmed an order of the State Commission which the State Court stated requires the Railroads "to construct a union passenger station" at a new site within a defined area in the City of Los Angeles "together with such tracks, connections and all other terminal facilities and additions, extensions, improvements and changes in the existing railroad facilities of the Railroads as may be reasonably necessary and incidental to the use of said union passenger station at a cost * * * of approximately Ten Million Dollars and in substantial compliance with the plans outlined by the Commission".

At the commencement of the proceedings which culminated in the order under review, the Railroads had separate passenger stations in the City of Los Angeles, none of which is in the vicinity of the others, two of the stations being located west of the Los Angeles River, and the other station east of the River. The location of these stations and of the tracks by which the Railroads reach their respective stations is graphically shown on Exhibit 5 incorporated in the record between pages 226 and 227.

The passenger facilities of the Railroads at Los Angeles are substantially as they were on April 7, 1924, the date upon which this Court rendered its

decision in the *First Los Angeles Case, supra,* except as hereinafter noted. The concise and complete statement made by the Court at page 338 of its opinion correctly reflects the situation which obtains today and it is quoted for the convenience of the Court:

> "Lines of the three railways approach Los Angeles from the north and come together in the city near the North Broadway viaduct as it crosses the Los Angeles River. Thence the Salt Lake and Santa Fe lines follow the bed of the Los Angeles River, one on its east and the other on its west bank. The Salt Lake passenger station is at 1st Street. Its main line from Pasadena and Glendale comes from the north, but its line from Salt Lake comes in from the south. From north to south in Los Angeles, its line hugs the east bank of the river for three miles. The Santa Fe Station is opposite that of the Salt Lake Railway on the west bank. The Santa Fe hugs the west bank for three miles in the city. One of its lines leaves Los Angeles by the north for Chicago. Another leaves the city by the south through Riverside for Chicago. The Southern Pacific does not follow the river bed after passing under the Broadway viaduct but extends in a southwesterly direction until it reaches the north end of Alameda Street. From that point it runs south through the city at grade on that street. Its station is at 5th Street and lies southwesterly from the Salt Lake and Santa Fe stations and a quarter of a mile distant from them. The eastern main line of the Southern Pacific crosses the river at Alhambra Avenue, joins the San Fran-

> cisco main line and reaches the station from there by the same tracks on Alameda Street. The Southern Pacific occupies Alameda Street on grade and longitudinally in both directions from its station for three miles. Its lines toward the South go to San Pedro and Santa Anna."

Attention should, however, be directed to the fact that the Los Angeles & Salt Lake Station having been destroyed by fire, that company at the present time occupies the Southern Pacific station jointly with that company and operates its trains into and out of the Southern Pacific station by using a portion of the Southern Pacific Company's main lines and passenger terminal facilities by agreement under temporary permits issued by the Commission (R. p. 260).

Proceedings were instituted before the Railroad Commission of the State of California in 1916 by several civic organizations praying for the elimination of certain grade crossings within the City of Los Angeles by the concentration and the joint use of the tracks of the Railroads and for a rearrangement of passenger stations and freight stations (R. pp. 9-12). Following protracted hearings the State Commission rendered its decision and order requiring the Railroads to eliminate specified grade crossings and to construct a union passenger station at a new site within a defined area *(First State Commission Decision, supra)* (R. p. 24).

Upon application of the Railroads a rehearing was granted and a second decision and amended order was made by the State Commission again requiring the Railroads to construct a union station and eliminate specified grade crossings *(Second State Commission Decision, supra)* (R. p. 84).

Petitions for writs of certiorari were filed by the Railroads in the Supreme Court of the State of California and the State Court annulled the Commission's said decisions and orders upon the ground that the orders were beyond the power of the State Commission because the subject matter had been committed to the Interstate Commerce Commission by the Transportation Act of 1920, the Court holding that if the State Commission's order had required only the elimination of grade crossings it would have been affirmed, but because it was based upon the establishment of a union station it was invalid *(First State Court Case, supra)*.

This Court granted writs of certiorari upon application of the State Commission and thereafter rendered its decision affirming the judgment of the State Court *(First Los Angeles Case, supra)*.

Subsequent to the time the State Commission's first two decisions were rendered and prior to the time this Court decided the case last cited, the City of Los Angeles instituted proceedings before the Interstate Commerce Commission praying for an order requiring the Railroads to construct and operate a union stat-

tion, to abandon main line passenger and freight service except local switching on Alameda Street, eliminate grade crossings, construct and acquire new facilities, and join in the operation of their several terminal facilities.

The Interstate Commerce Commission thereafter rendered its decision in the *First Federal Commission Decision, supra,* holding that it was not empowered to require the Railroads to construct a union passenger station and made what this Court characterized in the *Second Los Angeles Case, supra* (p. 62) as "hypothetical certificates". These certificates are summarized by this Court in that case as follows (p. 62):

> "(1) That the public convenience and necessity require the extensions of lines that may be necessary to reach and serve any union passenger station within the plaza which may be constructed in accordance with a lawful order of the State Commission and that may be necessary to provide for the incidental rearrangement of passenger and freight routes, and that the expense involved will not impair the carriers' ability to perform their duties to the public. (2) That public convenience and necessity permit the abandonment of train service on Alameda Street and such other abandonments of lines as would be necessary in connection with the establishment of any such station, so lawfully ordered by the State Commission. The report further found that such joint use of track or other terminal facilities as may be incidental and necessary to the proper opera-

> tion of any such union station is in the public interest and is practicable, without substantially impairing the owning carriers' ability to handle their own business. As to the application by the Southern Pacific and Salt Lake to extend their lines to permit the joint use of the Southern Pacific's existing station, the Commission's findings were unfavorable and its order denied the application. The Commission's then report was not accompanied by certificates carrying out its findings, and it reserved jurisdiction to alter its findings in the event that the plan of the State Commission, as finally evolved, should be materially different from that 'as here considered to be in the public interest.'"

Subsequent to the decision by the Federal Commission proceedings before the State Commission were reopened over the objections of the Railroads (R. pp. 111-118) and after further hearings, the State Commission rendered its third decision and order under review herein *(Third State Commission Decision, supra)*.

Referring to this order, the State Court said in the *Second State Court Case, supra* (R. p. 186):

> "A similar order was made by the Railroad Commission in 1921, and a writ of certiorari to review this action of the Commission was obtained from this court, and in December, 1922, this court filed its decision annulling such order. *A. T. & S. F. Ry. Co. v. Railroad Commission,* 190 Cal. 214."

The requirements of this "similar order" were summarized by this Court in the *First Los Angeles Case, supra,* as follows (p. 339):

> "The order of the Railroad Commission requires the abandonment of the passenger stations of the three railways. The Southern Pacific Station is a comparatively modern depot and would be adequate for many years. Those of the other two companies are not adequate, but they have ample ground upon which to construct suitable stations. The order required the removal from Alameda Street of the main line of the Southern Pacific for three miles, permitting the use of its tracks in that street for switching during a few hours at night. The order also required that by viaducts over the river and over the Salt Lake & Santa Fe tracks on the river banks, grade crossings should be eliminated. The order further required that the three railways should purchase jointly land enough in an area reaching from Alameda Street to the river and from Aliso Street to Alhambra Street to erect a suitable Union Station, to be situated somewhere near a square called the Plaza. The railways are directed to make such additions to, extensions of, improvements and changes in the existing railroad facilities of said companies as may be reasonably necessary and incidental to the use of said Union Passenger Station. This would require the removal of the present station of the Southern Pacific from 5th Street toward the Plaza, at least half a mile, and the stations of the Santa Fe and the Salt Lake from 1st Street on the river to the Plaza more than a quarter of a mile. The

changes to be effected under the order will require, in the abandonment of the Southern Pacific main track on Alameda Street for three miles, a joint use by the Southern Pacific of main tracks on the river bank with either the Salt Lake or the Santa Fe, or the construction of its own main tracks on one side or the other along the river bank. The main tracks of the Salt Lake must be extended across the Los Angeles River on a viaduct to the area selected for the Union Station. The main track of the Santa Fe runs along the river side of the selected area but an extension of its main tracks will have to be made to bring it into the new station.

The order requires the joint use of land, tracks and terminal facilities valued at $28,050,691; the abandonment of three existing passenger stations of the railways as such, and the ultimate capital expenditure for all recommendations of from $25,000,000 to $45,000,000."

With the exception of the reduced estimated cost and the requirement of the elimination of grade crossings over the Salt Lake and Santa Fe tracks on the river banks, over which viaducts have since been constructed, the State Commission's order under review is practically identical with its original orders.

This latest order requires the Railroads to construct a union passenger station in compliance with the plans outlined in the State Commission's Exhibit 4-b (R. p. 267), which it found to be in all essential respects similar to the plan considered by the State Commission

in its original decision and report; to extend their lines of railroad to reach the union station; to construct such tracks, connections and other terminal facilities and additions and improvements to existing facilities convenient or incidental to the use of said union passenger station; to permit the joint use by all of the Railroads of one or more of the Railroads' tracks and terminals; and to abandon existing stations, other facilities and certain main lines of railroad and the operation thereof. (R. pp. 131-134).

This order also involves the acquisition of new land, about forty acres, a portion of which is owned by some of the Railroads and its dedication to public use, it not now being dedicated to any public use; the acquisition of new railroad rights of way; and the obtaining of new franchises.

The State Commission's order was conditioned to become effective from and after the promulgation by the Interstate Commerce Commission of sufficient certificates or other appropriate order or orders authorizing the construction, extensions and abandonments ordered by the State Commission (R. p. 134).

The State Commission's order further required the Commission's attorney to apply to the Interstate Commerce Commission to issue such certificates or orders (R. p. 134).

The State Commission reserved the right to make such further orders or modifications thereof, "as may be determined by the Commission to be just and rea-

sonable and as public safety, convenience and necessity may require" (R. p. 134).

Petitions were filed with the Interstate Commerce Commission by the State Commission praying that certificates issue in accordance with the findings made by the Interstate Commerce Commission in the *First Federal Commission Decision, supra,* and by the City of Los Angeles asking that an order be entered requiring the Railroads to construct and thereafter operate a union passenger station and appurtenances in substantial compliance with the State Commission's Exhibit 4-b (R. p. 142).

The Interstate Commerce Commission then made its second decision and order denying the petition of the State Commission and City of Los Angeles to require the Railroads to construct a union station upon the ground that it had not been authorized to make such an order but undertook to issue certificates reciting that the present and future public convenience and necessity require the construction by the Railroads of extensions of their respective main lines of railroad, abandonment of such portions of their main lines as may be necessary to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of a union passenger station and permit of the abandonment and operation of passenger and freight train service by Southern Pacific Company on Alameda Street and require the use by the Railroads of so much of the

terminal main line track or tracks of any of the other Railroads as may be incidental and necessary or convenient to the operation of a union passenger station (*Second Federal Commission Decision, supra,* R. pp. 135, 153).

The City of Los Angeles petitioned the Supreme Court of the District of Columbia for a writ of mandamus to compel the Interstate Commerce Commission to require the Railroads to construct and operate an interstate union passenger station in the City of Los Angeles. This petition was dismissed by the Supreme Court of the District, reversed by the Circuit Court of Appeals, which Court was in turn reversed by this Court in the *Second Los Angeles Case, supra.*

Thereafter the State Court entered its judgment affirming the order under review and decided that Congress has not "entered the field of regulation respecting the establishment of union stations to such an extent as to automatically terminate the state's power to deal with that subject * * * that Congress has merely occupied the field of supervising and ascertaining the jurisdictional facts with relation to the establishment of such stations * * *"; "that the Railroad Commission of California has not been divested of jurisdiction to make the order" * * * and "that this power never having been divested is vested at present in the State Railroad Commission * * *"; that the State Commission is vested

with power to require the Railroads to construct "such tracks, connections, and all of the terminal facilities and additions, extensions, improvements and changes in the existing railroad facilities of applicants as may be reasonably necessary and incidental to the use of said union passenger station" *(Second State Court Case, supra,* R. pp. 184 *et seq.*).

The State Court further held that the State Commission's order did not violate the constitutional rights of the Railroads in requiring them to abandon adequate facilities, including their passenger terminals and portions of their main lines of railroad; to acquire and dedicate to public use new property necessary for the construction of a union station; to extend their main lines of railroad to reach new territory not heretofore served by them and to permit other Railroads to use their main line tracks and passenger terminal facilities without adequate or any compensation (R. p. 195).

The State Court denied the Railroads' petitions for rehearing June 26, 1930, and the Railroads thereupon brought the cases to this Court by direct appeal (R. p. 199).

CONSOLIDATION OF CASES.

The several proceedings before the State Commission were consolidated, and although the Railroads filed separate petitions for writs of review in the State

Court the cases were again consolidated, and but one record has been filed in this Court and the Railroads join in this brief although their interests are several and in some respects are not reciprocal and mutual.

QUESTIONS PRESENTED.

There are four principal questions presented for decision:

1. Whether the order of the State Commission requiring the Railroads to construct a union station at a new site; to extend and abandon their main lines of railroad; to permit one another to jointly use their main lines of railroad, tracks and other facilities; to connect their respective railroads with one another; to join in constructing main line tracks for their joint use; and to consolidate their terminal facilities, is a regulation of interstate commerce in conflict with the powers which have been vested in the Interstate Commerce Commission by the Act to Regulate Commerce and particularly by paragraphs (18) - (21) of Section 1, and paragraphs (3) - (4) of Section 3 thereof and therefore an unlawful invasion of the field occupied by Congress thereby violating provisions of Section 8 of Article 1 of the Constitution of the United States;

2. Whether the certificates issued by the Interstate Commerce Commission in adversary proceedings purporting to authorize the Railroads to extend and abandon their main lines of railroad are beyond the power which has been vested in that Commission and are therefore void;

3. Whether the order of the State Commission requiring the Railroads to extend their main lines of railroad to reach new territory; to permit the joint use by one or more railroads of facilities owned by the others; to join in constructing tracks, connections and other terminal facilities; to install large and expensive additions and betterments; to abandon main lines of railroad; to abandon the use of adequate passenger facilities at their sole cost and expense without provision for making adequate or any compensation therefor, is beyond the power which it can constitutionally exercise and deprives the Railroads of their property without due process of law, and denies them the equal protection of the law in contravention of the provision of the Fourteenth Amendment to the Constitution of the United States;

4. Whether the order of the Commission is beyond the power which it can constitutionally exercise and deprives the Railroads of their property without due process of law in contravention of the provisions of the Fourteenth Amendment to the Constitution of the United States because:

(a) It requires one of the Railroads, Southern Pacific Company, to abandon its adequate passenger station and passenger facilities and join the other two Railroads, Santa Fe and Los Angeles & Salt Lake Companies, in acquiring new property upon which to construct a new union station, to construct such station and to extend its main lines

for the purpose of eliminating grade crossings and providing these railroads with adequate passenger terminal depots;

(b) It requires the Santa Fe and Los Angeles & Salt Lake Companies to abandon adequate passenger station facilities and join Southern Pacific Company in acquiring new property upon which to construct a new union station, to construct such station, and to extend their main lines for the purpose of eliminating grade crossings of Southern Pacific Company with which they have no concern.

STATUTES INVOLVED.

Pertinent provisions of the Federal Statutes, 41 U. S. Stat. at Large, C. 91, pp. 476-478, Sec. 402, 49 U. S. C. A., Sec. 1, pars. (18) to (22), pars. (18) to (22) of Sec. 1 of Interstate Commerce Act, and 41 U. S. Stat. at Large, C. 91, pp. 479-480, Sec. 405, 49 U. S. C. A., Sec. 3, pars. (3) and (4), pars. (3) and (4) of Sec. 3 of Interstate Commerce Act, are printed in the Appendix hereto.

Likewise pertinent provisions of the Constitution of California, Const. of Cal., Art. XII, Secs. 22 and 23, and of the Public Utilities Act of the State of California, Statutes of California 1915, C. 91, p. 115, Secs. 13(b), 22(a), 30, 31, 36, 41, and 67, are printed in the Appendix hereto.

Specification of Errors.

A specification of such of the assigned errors as the Railroads urge is that the State Court erred:

I.

In holding that the order of the State Commission commanding the Railroads, and each of them, to extend their main lines of railroad, abandon main lines of railroad and the operation thereof and existing station facilities, permit joint use of their main line tracks by each other, connect their main line tracks with those of each other, join in constructing main line tracks for their joint use, join in constructing other terminal facilities, additions, extensions, improvements in their existing railroad facilities, join in establishing, maintaining and operating a union passenger station at a new site, and interchange traffic between their lines of railroad, is not beyond the power of the State Commission, is not in conflict with the powers conferred by Congress upon the Interstate Commerce Commission by the provisions of paragraphs (18) - (21) of Section 1, and paragraphs (3) and (4) of Section 3, of the Interstate Commerce Act, and is not such a regulation of interstate commerce as conflicts with the power of Congress to regulate such commerce under Section 8 of Article I of the Constitution of the United States (Assignment of Errors, 6, 7, 8, 9, 10, 12; 13, R. pp. 207-210).

II.

In holding that the certificates issued by the Interstate Commerce Commission in adversary proceedings and not upon the motion or application but over the protest and objection of the Railroads are proper and sufficient; that the State Commission is vested with power and authority to order the Railroads to construct main line tracks, main line track connections and other railroad facilities, make joint use of such tracks and abandon existing stations, station facilities and main line tracks, as may be reasonable, necessary and incidental to the use of a union station at the City of Los Angeles in accordance with said certificates, and to enforce compliance with said certificates, is not an attempt by the State Commission to order the Railroads to do that which can be permitted by the Interstate Commerce Commission only upon applications made by the Railroads (Assignment of Errors, 14, 15, 16, 17, R. pp. 210-211).

III.

In holding that the order of the Railroad Commission of the State of California requiring the Railroads, and each of them, to construct such tracks, connections, and other terminal facilities, additions, extensions of lines, improvements and changes in the existing railroad facilities of the Railroads, as are necessary or incidental to the use of the union passenger station to be located in territory not hereto-

fore served by the Railroads, permit one another to make use of their main line tracks, join with each other in constructing tracks for their joint use, make connections between their main line tracks, abandon the use of their existing passenger stations, station grounds, and portions of their main lines, join each other in constructing, maintaining and operating a union passenger station at a new site, acquire and dedicate to public use the new property necessary for the construction of said union station, procure large sums of new capital to comply with said order, does not deprive the Railroads of their property without due process of law and deny the Railroads the equal protection of the law in contravention of the Fourteenth Amendment to the Constitution of the United States (Assignment of Errors, 1, 2, 3, 4, 5, R. pp. 205-207).

IV.

(a) In holding that the order of the State Commission requiring Southern Pacific Company to abandon its adequate passenger station and facilities and join with The Atchison, Topeka & Santa Fe Railway Company and Los Angeles & Salt Lake Railroad Company in acquiring new property upon which to construct a union passenger station for the purpose of eliminating certain grade crossings in the City of Los Angeles, and for the purpose of providing said other carriers with adequate passenger terminal depots, does not deprive Southern Pacific Company of its property

without due process of law and takes its property for public use without compensation, in contravention of the Fourteenth Amendment to the Constitution of the United States (Assignment of Errors, 20 S. P. Co., R. p. 214).

(b) In holding that the order of the State Commission requiring The Atchison, Topeka & Santa Fe Railway Company and the Los Angeles & Salt Lake Railroad Company to abandon the use of their respective passenger stations and station grounds in the City of Los Angeles and join with Southern Pacific Company in maintaining and operating a union passenger station for the purpose of removing trains of Southern Pacific Company from Alameda Street in said City, with which removal they have no concern, is not a taking of their property without due process of law and denying them the equal protection of the law in violation of the Fourteenth Amendment to the Constitution of the United States (Assignment of Errors, 20 A. T. & S. F. Ry. Co. and 20 L. A. & S. L. R. Co., R. pp. 212-213).

Summary of Argument.

I. The State Commission's order is in contravention of and repugnant to the provisions of Section 8, Article 1, of the Constitution of the United States, and the powers sought to be exercised by the State Commission are inconsistent and in conflict with the powers vested in the Interstate Commerce Commission by the provisions of paragraphs (18-21) of Section 1, and paragraphs (3-4) of Section 3 of the Interstate Commerce Act.

The State Commission, By the Specific Requirements of Its Order, Has Invaded a Field Which Has Been Occupied By Congress.

Congress Has Fully Occupied the Field and the State Has Been Divested of the Power to Order Extensions, Abandonments, Consolidation of Terminals, Joint Use of Terminals and Interchange of Traffic.

When Congress occupies the field relating to interstate commerce a State Statute is superseded even though the Federal Statute does not cover the subject as fully and completely as the State Law.

The order of the State Commission cannot be supported or rendered valid by certificates issued by the Interstate Commerce Commission.

There cannot be a divided authority between the Federal and State Commissions.

Neither the Federal nor the State Commissions have been vested with power to give effect to orders entered by the other.

II. The certificates of the Interstate Commerce Commission are void.

The Certificates Could Not Lawfully Be Issued Under Paragraphs (18), (19) and (20) of Section 1 of the Interstate Commerce Act.

They were issued not on application of the Railroads, but in proceedings adverse to them and over their protest.

Paragraphs (18), (19), (20) of Section 1 do not give the Commission power to issue certificates except on application of carriers.

Paragraph (21) of Section 1 Does Not Give the Commission Authority to Issue the Certificates.

The Question of the Validity of the Certificates Was Decided by the State Court and is Duly Presented Here.

III. The State Commission's order deprives the railroads of their property without due process of law and denies them the equal protection of the laws and takes their property for public use without just compensation, in contravention of the Fourteenth Amendment to the Constitution of the United States.

The Railroads Are Denied Their Constitutional Rights By Failure of the State Commission to Provide Compensation for the Use of Their Railroad Properties By One Another.

The State Commission Cannot Impair the Railroads' Constitutional Rights Under the Guise of Exercising Its Police Power Requiring the Railroads to Eliminate Grade Crossings.

IV. (a) The State Commission's order deprives Southern Pacific Companyof its property without due process of law and takes its property for public use without just compensation because the necessary force and effect thereof is to require it to abandon main line tracks, adequate existing passenger station and station grounds, acquire a new station site, rights of way leading thereto and join in constructing new terminal facilities at a new location and extend its main lines of railroad, for the purpose of providing the Santa Fe and Los Angeles & Salt Lake Companies with adequate passenger depots.

Southern Pacific Company Cannot Be Compelled to Incur the Expense of Providing Adequate Station Facilities for Other Lines.

(b) The State Commission's order deprives The Atchison, Topeka and Santa Fe Railway Company and Los Angeles & Salt Lake Railroad Company of their property without due process of law and deprives them of the equal protection of the laws, because the necessary force and effect thereof is to require these railroads to join with other railroads in the construction of a union station to accomplish the purpose of eliminating grade crossing of Southern Pacific Company on Alameda Street, with which they have no concern.

Argument.

I.

THE STATE COMMISSION'S ORDER IS IN CONTRAVENTION OF AND REPUGNANT TO THE PROVISIONS OF SECTION 8, ARTICLE 1, OF THE CONSTITUTION OF THE UNITED STATES, AND THE POWERS SOUGHT TO BE EXERCISED BY THE STATE COMMISSION ARE INCONSISTENT AND IN CONFLICT WITH THE POWERS VESTED IN THE INTERSTATE COMMERCE COMMISSION BY THE PROVISIONS OF PARAGRAPHS (18-21) OF SECTION 1, AND PARAGRAPHS (3-4) OF SECTION 3 OF THE INTERSTATE COMMERCE ACT.

(Specification of Error I.)

REQUIREMENTS OF STATE COMMISSION'S ORDER.

The requirements of the State Commission's order under review are substantially identical with its two previous orders, which were reviewed by this Court in *First Los Angeles Case, supra,* and the State Court so held in *Second State Court Case, supra* (R. p. 186).

The Commission's order requires:

1. Construction of a union passenger station in a new location.

   Com. Finding No. 7, R. p. 132,
   Com. Order, par. 1, R. p. 133.

2. Joint use of main lines of railroad and terminal facilities owned by the several Railroads,

   Com. Finding No. 6, R. p. 132,
   Com. Order, par. 1, R. p. 133,
   Com. Exhibit No. 6, R. p. 227.

3. Construction of connections between main lines of the Railroads.

Com. Order, par. 1, R. p. 133,
Com. Exhibit 6, R. p. 227,
Com. Exhibit 4-B, R. p. 267.

4. Extension of main lines of steam railroad so as to reach and serve said union passenger station.

Com. Finding No. 3, R. p. 131,
Com. Order, par. 1, R. p. 133.

5. Construction of approximately 8.28 miles of joint station tracks, connections and all other terminal facilities necessary, convenient or incidental to the use of said union passenger station.

Com. Finding No. 7, R. p. 132,
Com. Order, par. 1, R. p. 133,
Com. Exhibit 4-B, R. p. 267.

6. Abandonment of main lines of railroad and the operation of all or any portion of the present train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks and terminal facilities necessary in connection with the construction and establishment of said union passenger station.

Com. Finding No. 5, R. p. 132,
Com. Order, par. 1, R. p. 133,
Com. Exhibit 4-B, R. p. 267.

7. Abandonment and discontinuance of operation by Southern Pacific Company of passenger and freight train service (except industrial freight switching during specified night hours) over approximately 6.6 miles of its main line of railroad.

Com. Finding No. 3, R. pp. 132-4, 137.

THE STATE COMMISSION, BY THE SPECIFIC REQUIREMENTS OF ITS ORDER, HAS INVADED A FIELD WHICH HAS BEEN OCCUPIED BY CONGRESS.

A consideration of the specific requirements of the Commission's order shows wherein the order is inconsistent and in conflict with the powers which have been vested in the Interstate Commerce Commission.

(1) Union Station.

In its first decision the State Court held that full power and authority over the matter of union terminal depot facilities of the Railroads, who are largely engaged in interstate commerce, has been vested in the Interstate Commerce Commission under the terms of the Transportation Act, 1920, and that by virtue thereof the Railroad Commission of California has been divested of the power, authority and jurisdiction over that subject (*First State Court Case, supra,* p. 227).

In *First Los Angeles Case,* the question presented was whether Congress had occupied the field and thereby divested the State Commission of power to

require railroads to construct a union station of the character involved in these proceedings. This Court stated:

> "Our only question here is whether the power to direct a new union station with its essential incidents is committed exclusively to the Interstate Commerce Commission under the Act of 1920."
>
> *First Los Angeles Case, supra,* p. 341.

This Court, in affirming the judgment of the State Court, pointed out specifically the manner in which Congress had occupied the field and thereby divested the State Commission of power to order the Railroads to construct the union station.

After analyzing various provisions of the Interstate Commerce Act, as amended by the Transportation Act, 1920, this Court held (p. 343):

> "It is obvious from the foregoing that Congress intended to place under the superintending and fostering direction of the Interstate Commerce Commission all increased facilities in the matter of distribution of cars and equipment and in joint terminals, in the exchange of interstate traffic and passengers between railways so as to make it prompt and continuous. It not only provides for the temporary expropriation of terminals and main track of one railway to the common use of one or more other railways in an emergency, but it also contemplates the compul-

sory sharing of one company's terminals with one or more companies as a permanent arrangement. This is a drastic limitation of a carrier's control and use of its own property in order to secure convenience and dispatch for the whole shipping and travelling public in interstate commerce. It gives to the Interstate Commerce Commission the power and duty, where the public interest requires, *to make out of what is the passenger and freight station of one interstate carrier, a union station or depot.*" (Italics ours.)

Second Los Angeles Case involved the question whether the Interstate Commerce Commission had been vested with the *compulsory* power to order the Railroads to build a union station, and this Court held that Congress had not authorized the Interstate Commerce Commission to exercise such *compulsory* power. This Court held:

> "It is quite true that we made references in the opinion to a case foreshadowed in the hypothetical certificates of the Commission in the building of a union station. Such references, had, however, not the slightest significance in respect to who could or should build the station, or whence its cost should be defrayed. It was as far as possible from the purpose of the Court in its opinion to indicate its views of the powers which the Commission could exercise adversely to the carriers in compulsory proceedings. They were not before the Court for adjudication."

Second Los Angeles Case, supra, p. 71.

In the *Second State Court Case, supra* (R. p. 193), the Court placed an erroneous interpretation upon the decisions of this Court in holding that "under the decision of the United States Supreme Court * * * Congress has merely occupied the field of supervising and ascertaining the jurisdictional facts with relation to the establishment of such stations".

The decisions of this Court *(First Los Angeles Case and Second Los Angeles Case)* admit of no such interpretation; but, on the contrary, distinctly hold that Congress has manifested its intention to exert its exclusive power to control the establishment of union stations, such as the State Commission has ordered the Railroads to construct.

This Court disposed of the argument advanced by the State Commission in *First Los Angeles Case* that the supervisory power of the Interstate Commerce Commission over existing terminals did not "include the installation of an interstate union station, where its terminals and main tracks are newly built, and the interstate carriers are compelled to expropriate, not the terminal property of another interstate carrier, but property of others than carriers not theretofore used for terminals * * *", by stating:

> "This would be giving power to the Interstate Commerce Commission to provide for a small and contracted union station of interstate carriers limited to the terminals of one carrier, and would leave the larger and more important

union stations of interstate carriers to the control of state commissions. We think, however, that means of control over installation of such new union stations for interstate carriers is given to the Interstate Commerce Commission in amended paragraphs (18) to (21) of Section 402." (p. 344)

This Court distinctly held that it was not the intention of Congress to vest the Federal Commission with control over unimportant union stations and leave the larger and more important union stations to the control of State Commissions, but that it was the intention of Congress to exert exclusive control of all new union stations of interstate carriers except those of the character to which the Court referred at pages 345-346 in *First Los Angeles Case, supra:*

"One might, too, readily conceive of railroad crossings or connections of interstate carriers in which the exercise by a state commission of the power to direct the construction of merely local union stations or terminals without extensions of main tracks and substantial capital outlay should be regarded as an ordinary exercise of the police power of the state for the public convenience and would not trench upon the power and supervision of the Interstate Commerce Commission in securing proper regulation of an interchange of interstate traffic or passengers." * * * "But there is a great difference between such relocation of tracks or local union stations and what is proposed here. The differences are more than that

> of mere degree; they and their consequences are so marked as to constitute a change in kind."

This Court clearly indicated the utmost limits of the power of states with respect to union stations and held that a state may direct the construction at railroad crossings or connections of merely local union stations or terminals in cases which do not involve the extensions of main lines or substantial capital outlay.

The power which may be exercised by the states in the establishment of local union stations does not extend to such a union station as is involved in this case. With respect to such union stations, the states no longer have any control.

In *First Los Angeles Case, supra,* p. 344, this Court held that a certificate from the Interstate Commerce Commission was necessary before a new union station, which involves a substantial extension of the main tracks or lines of interstate carriers who theretofore have maintained separate terminals, could be constructed.

In *Second Los Angeles Case, supra,* p. 71, this Court, in referring to what it had held in its previous decision, stated:

> "We held such a certificate to be necessary before a union station or connecting lines of interstate carriers could be lawful."

It is apparent from the decisions of this Court that Congress has occupied the entire field of establishing union stations of interstate carriers involving extensions, extensive changes, relocation, or joint use of main line and terminal tracks. With respect to existing terminals, the Interstate Commerce Commission is given the power and the duty is imposed upon it "where the public interest requires, to make out of what is a passenger and freight station of one interstate carrier, a union station or depot". With respect to the establishment of new union stations for interstate carriers, the Interstate Commerce Commission is given the power to determine whether they are necessary in the public interest, and if found to be necessary, to *authorize* the railroads involved to establish such a station. With respect to existing terminals the Commission is given the power to *compel* the establishment of union stations. With respect to new union stations, the Commission is given the power to *authorize* but not to *require*. This power is referred to in the *Second Los Angeles Case* as "discretionary leave for the erection of such stations".

(2-3) Joint Use of Main Lines and Terminal Facilities and Connections Between Main Lines.

These requirements of the Commission's order necessarily involve the attempted exercise of a power by the State Commission which has been expressly vested in the Interstate Commerce Commission and is therefore void. By paragraph (4) of Section 3,

Congress has conferred upon the Interstate Commerce Commission authority to require railroads to share the use of their terminals and terminal facilities, including their main line tracks, for a reasonable distance outside of such terminals, with other carriers. And this power, not only authorizes the Interstate Commerce Commission to compel carriers to permit of such joint use of their terminals and main line tracks, but also to fix reasonable compensation for the use so required.

It is deemed unnecessary to extend the argument to convince the Court that the State Commission cannot arrogate to itself this power which Congress has expressly confided to the Interstate Commerce Commission. This question is disposed of in *Alabama Ry. v. Jackson Ry.*, 271 U. S. 244, 250.

In the case cited this Court decided that since the enactment of the Transportation Act, 1920, jurisdiction to order a connection between the main lines of two or more railroads engaged in interstate as well as intrastate commerce is vested exclusively in the Interstate Commerce Commission. This Court held, page 250:

> "The establishment of junctions between the main lines of independent carriers is commonly connected with the establishment of through routes and the interchange of car services, and is often but a step toward the joint use of tracks. Over all of these matters the Commission has exclusive jurisdiction."

(4-5) Extension of Main Lines and Station Tracks.

The State Commission's order requiring the Railroads to extend their main lines so as to reach the union passenger station, which they are ordered to construct, and to construct joint station tracks and other terminal facilities incidental to the use of such station, likewise is an attempted exercise of a power by the State Commission which has been expressly conferred upon the Interstate Commerce Commission.

Paragraphs (18) - (21), Section 1 of the Act, vest the Interstate Commerce Commission with power and authority to regulate the extension of the main lines of railroad. This power is and must necessarily be exclusive. Paragraph (18) vests the Commission with power to *authorize* but not to *require* all construction and extension of lines. The extension of lines necessary to reach a union station at Los Angeles falls within this provision of the statute and the Railroads may not extend their lines until a certificate of public convenience and necessity has been obtained from the Interstate Commerce Commission. This Court held:

> "Such a certificate is, we think, necessary in the construction of a new interstate union station which involves a substantial and expensive extension of the main tracks or lines of interstate carriers who theretofore have maintained separate terminals."
>
> *First Los Angeles Case, supra,* p. 344.

The power vested by paragraph (18) is permissive. It is what this Court characterized in *First Los Angeles Case* as "discretionary leave". It is inconceivable that Congress, in vesting its Commission with this permissive power, intended that the states might convert permissive certificates issued by its Commission into compulsory orders, thereby imposing a double restraint upon the carriers, namely, the necessity of a certificate from the Federal Commission to be supplemented by an order from the State Commission commanding carriers to extend their lines, thereby authorizing the State Commissions to exercise whatever power they possessed to order extensions prior to 1920.

In paragraph (21) of Section 1, the Commission is given such compulsory power over the extension of lines as Congress deemed necessary. It is unnecessary to determine exactly what power Congress intended to delegate to its Commission by enacting paragraph (21). At least three interpretations are possible: First, that Congress intended to vest its Commission with all the power which Congress could constitutionally delegate with respect to compulsory extension of lines; second, that Congress intended to delegate the power to compel extensions of lines to insure proper car service, as those words are used in the Act; third, that Congress intended to delegate such power to order extensions of lines as might be reasonably necessary in order that the carriers might

properly perform all the duties required of them by the Act.

Whatever construction may be placed upon the words "And to extend its line or lines," as they appear in paragraph (21) it is manifest that the power is exclusive and that no power remains in the State Commission to order interstate carriers to extend their lines. Congress has occupied the field of compulsory extension under whatever construction this Court may finally place upon paragraph (21). The power which Congress has vested in its Commission is necessarily exclusive.

Ever since the passage of the Transportation Act carriers have been making applications, under the provisions of paragraph (18), to obtain certificates permitting them to extend their main lines of railroad. Carriers are required to obtain such certificates from the Commission before extending their lines, upon the theory that the Interstate Commerce Commission should exercise control over extensions of main lines of railroad, to prevent unnecessary and uneconomical construction. But the certificates issued under such applications are not commands. When a carrier has obtained such a certificate or permission, it may or may not construct the extension of its line which the Commission has authorized. Frequently conditions change and the carriers conclude not to construct the extension. If it should be decided that a certificate,

which a carrier has obtained authorizing an extension of its lines, may be changed from a permission into a command against the will of the carrier by an order of a State Commission, carriers will hesitate to place themselves in a position where the discretion which Congress was careful to permit them to exercise may be taken away by a compulsory order of a State Commission. Instead of placing upon the carriers a single restraint, as Congress in requiring the issuance of a certificate by its permission intended, the carriers will be placed under a double restraint; namely, the necessity of obtaining a certificate from the Interstate Commerce Commission, and the liability that such certificate may be converted into an order by a State Commission. To hold that a State Commission may convert such a permission into a command, is to allow the state governments to place a burden upon interstate commerce.

By paragraph (22) of the same section Congress has specifically set forth what character of new construction is not within either the permissive power, "discretionary leave," or compulsory power conferred upon the Interstate Commerce Commission and which the states may therefore regulate.

Congress has specifically designated the field within which the state power is applicable, and such designation precludes any argument that Congress intended that the states might exercise compulsory power within the field, either of the permissive or compulsory

power which has been vested in the Federal Commission.

The State Commission, in ordering the Railroads to extend their main lines, is acting to supplement the power of "discretionary leave" which Congress has conferred upon the Federal Commission by exercising a compulsory power which, under the decisions of this Court, it may not do.

(6-7) Abandonment of Main Lines and the Operation Thereof.

Paragraph (18), Section 1, vests the Interstate Commerce Commission with full control over the abandonment of lines and the operation thereof, except as provided by paragraph (22) of Section 1, which defines the field within which the states may regulate such matters.

In *Colorado v. United States,* 271 U. S. 153, 168, this Court held that Congress has assumed exclusive regulation of the abandonment of lines or of the operation thereof, and that in determining whether the proposed abandonment is consistent with public necessity and convenience, the Interstate Commerce Commission "must have regard to the needs of both intrastate and interstate commerce. For it was a purpose of Transportation Act, 1920, to establish and maintain adequate service for both". This decision establishes the exclusive power of the Federal Commission in these particulars.

CONGRESS HAS FULLY OCCUPIED THE FIELD AND THE STATE HAS BEEN DIVESTED OF THE POWER TO ORDER EXTENSIONS, ABANDONMENTS, CONSOLIDATIONS OF TERMINALS, JOINT USE OF TERMINALS AND INTERCHANGE OF TRAFFIC.

We have undertaken to deal with the specific requirements of the Commission's order in an endeavor to show that the State Commission, by entering its order, has undertaken to exercise powers which have been vested exclusively in the Interstate Commerce Commission. The provisions of the statute, to which we have referred separately, are each an integral part of the Interstate Commerce Act and should be considered *in pari materia.*

The purposes of Congress are to be determined not merely by considering separately the regulations contained in the Act to Regulate Commerce, as amended by the Transportation Act of 1920, but by this legislation considered in its entirety.

In deciding cases which have arisen subsequent to the enactment of the Transportation Act, this Court has clearly indicated the wide scope of this congressional legislation and held that it was the purpose of Congress to enact a law complete in itself to accomplish the ultimate purpose of providing the people of the United States with an adequate transportation system.

First Los Angeles Case, supra;
Alabama, etc. Ry. v. Jackson, etc. Ry., supra;
Colorado v. United States, supra;

Texas & Pacific Ry. v. Gulf, etc. R. Co., 270 U. S. 266;

Dayton-Goose Creek Ry. Co. v. United States, 263 U. S. 456;

New England Divisions Case, 261 U. S. 184;

Railroad Comm. v. C. B. & Q. R. R. Co., 257 U. S. 563.

In *Alabama Railway v. Jackson Railway, supra*, this Court held (p. 249):

> "The only limitation set by Transportation Act, 1920, upon the broad powers conferred upon the Commission over the construction, extension and abandonment of the lines of carriers in interstate commerce, is that introduced as paragraph 22 of Section 1, which excludes from its jurisdiction 'Spur, industrial, team, switching or side tracks, located wholly within one state, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation.'"

See also *Colorado v. United States, supra.*

This Court has held in the two cases, which it has heretofore decided in connection with the establishment of the proposed union station, that Congress has manifested its intention to exert its exclusive power to control the establishment of union stations for interstate carriers involving extensions, abandonments, extensive changes, relocation, and joint use of main line and terminal tracks.

Under the decisions of this Court, it is elementary that the right of a state to exert its police power for the purpose of regulating interstate commerce exists only from the silence of Congress on the subject. When Congress manifests its intention to occupy the field its power over such subject is exclusive and the authority of the state ceases.

This Court's decision leaves no room for doubt as to the powers of the State Commission over the establishment of new union stations, and the unique—not to say absurd—situation which would arise if the Interstate Commerce Commission possessed the lesser power to make joint terminals out of existing terminals while the State Commission possessed the greater power to order the establishment of new union stations. Such a situation would mean that there would be divided authority over the same subject matter in direct conflict with the decisions of this Court.

The congressional scheme contemplates that new union stations may only be erected by the voluntary act of the carriers under permission of the Interstate Commerce Commission authorizing the carriers to make necessary extensions, abandonments and joint use of tracks, virtually leaving it to the business judgment of the carriers to determine whether such structure should be constructed. The construction of union stations is not within the absolute duties of the carriers, and the public interests may be adequately protected by orders issued by the state commissions re-

quiring carriers to provide adequate individual passenger station facilities to serve the patrons of their respective lines.

It was manifestly the intention of Congress that in respect to the establishment of union stations the power of the Federal Commission should be limited to create union stations by the utilization of existing terminals so as to more completely effectuate the congressional policy of providing the people of the United States with an adequate transportation system without extravagant outlays for monumental union stations designed primarily to gratify the civic pride of ambitious communities. If the forty-eight state commissions had not been divested of the power to compel carriers against their will to embark upon such costly enterprises at the instance of local communities actuated by civic pride and aesthetic considerations, the national policy declared by Congress in the Transportation Act would be seriously impaired if not defeated.

The law was designed to prevent such extravagance, but nevertheless to permit the carriers when sanctioned by the Federal Commission to erect union stations whenever in their judgment it was desirable to do so to meet the requirements of their patrons.

When Congress Occupies the Field Relating to Interstate Commerce, a State Statute is Superseded Even Though the Federal Statute Does Not Cover the Subject as Fully and Completely as the State Law.

Even though the Interstate Commerce Commission has not been vested with power to *order* carriers to establish new union stations, this Court held in *First Los Angeles Case, supra,* and *Second Los Angeles Case, supra,* that the Federal Commission has been vested with jurisdiction to *regulate* the establishment of new union stations involving the extension and abandonment of lines, the joint use of terminals, the consolidation of terminals, connections between lines of railroads and to create a union station or depot out of existing passenger stations.

Congress having occupied this field, the state statute seeking to regulate such matters is thereby annulled although the federal statute does not cover the subject as fully and completely as the state law.

The principle is cogently expressed by Mr. Justice Holmes, speaking for the Court in *Charleston & Western Carolina Ry. Co. v. Varnville Furniture Co.,* 237 U. S. 597 (604):

> "When Congress has taken the particular subject matter in hand coincidence is as ineffective as opposition, and a state law is not to be declared a help because it attempts to go farther than Congress has seen fit to go."

It is elementary that where Congress has legislated, the federal as distinguished from the state law con-

trols. Otherwise Congress would be denied the right to exercise its constitutional authority and the state and not the nation would be supreme within the national field.

By conferring upon the Interstate Commerce Commission the power to compel carriers to make union stations out of existing stations and by giving the Commission "discretionary leave" or power to authorize railroads to join in the construction of new union stations, Congress has indicated the extent to which it wishes to exert its exclusive power with respect to the construction and establishment of union stations and the extent to which it wishes this subject to be regulated. The State of California may be of the opinion that Congress has not gone far enough in the regulation of the establishment of new union stations and may wish to supplement the requirements prescribed by Congress, but the state is impotent to supplement or add to the requirements prescribed by Congress.

In *Penn. R. R. Co. v. Public Service Commission*, 250 U. S. 566, 569, this Court held:

> "But when the United States has exercised its exclusive powers over interstate commerce so far as to take possession of the field, the states no more can supplement its requirements than they can annul them."

Had Congress intended that there should be this division of power or that the state might supplement

its regulatory requirements it would undoubtedly have manifested this intention by the use of appropriate words to that effect, just as it clearly indicated in paragraph (22) of Section 1, that it did not intend to regulate "the construction or abandonment of spur, industrial team, switching or side tracks, located or to be located wholly within one state", but left the regulation thereof to the states. Certainly there are no words in the Interstate Commerce Act manifesting any intention on the part of Congress that the states, under the guise of establishing union stations, might compel railroads to erect costly and expensive monuments to the civic pride of cities or other communities.

Congress having evinced an intention to regulate the construction of new union stations for interstate carriers, and having prescribed the extent to which it wishes them regulated, it must be deemed to have determined that the regulation provided is all that is necessary in the public interest, and the states are without authority or power to provide any additional or supplemental regulation.

If there were any question on this point, it is disposed of by the decision of this Court in *Missouri Pacific Ry. v. Porter*, 273 U. S. 341.

In the case cited a shipment moving in interstate and foreign commerce was destroyed by fire at the point of origin in Arkansas without fault on the part of the carrier. The bill of lading under which

the shipment moved exempted the carrier from liability for such loss but a statute of Arkansas provided that a provision in bills of lading exempting carriers from liability for any loss by fire was void. No act of Congress or order of the Interstate Commerce Commission prescribed the form of bill of lading for this shipment, but paragraph 6 of Section 1 of the Interstate Commerce Act requires all carriers subject to the Act to establish and enforce just and reasonable regulations affecting the issuance, form, and substance of bills of lading. This Court, in reversing the State Court decision, which held the carrier liable, held (p. 345):

> "The general regulation of the 'issuance, form, and substance' of bills of lading is broad enough to cover contractual provisions, like the one involved in this case, exempting railroads from liability for loss of shippers' property by fire. Congress must be deemed to have determined that the rule laid down and the means provided to enforce it are sufficient and that no other regulation is necessary. Its power to regulate such commerce and all its instrumentalities is supreme; and, as that power has been exerted, state laws have no application. They cannot be applied in coincidence with, as complementary to or as in opposition to, federal enactments which disclose the intention of Congress to enter a field of regulation that is within its jurisdiction."

The same rule was applied by this Court in construing the validity of the New York Hours of Service Act, which went further than the Hours of Service Act, which had been enacted by Congress:

> "It admits of no supplement; it is a prescribed measure of what is necessary and sufficient for the public safety and of the cost and burden which the railroad must endure to secure it."
>
> *Erie R. R. Co. v. New York,* 233 U. S. 671, 683.

Such cases as *Missouri Pacific Railway v. Larabee Mills,* 211 U. S. 612, *Savage v. Jones,* 225 U. S. 501, *M. K. & T. Ry. v. Harris,* 234 U. S. 412, and *Sligh v. Kirkwood,* 237 U. S. 52, afford no authority for the exercise by the State Commission of the power that it is seeking to exercise in the case under consideration.

The *Larabee Mills Case* was explained by this Court in *Oregon, Washington Company v. Washington,* 270 U. S. 87, 102, as "one on the border line, three judges dissenting". The Court stated:

> "The number of cases decided since that case and above cited have made it clear that the rule, as it always had been, was not intended in that case to be departed from. That rule is that there is a field in which the local interests of states touch so closely upon interstate commerce that, in the silence of Congress on the subject, the

states may exercise their police powers; and local switchings, as in that case, and quarantine, as in the case before us, are in that field. But when Congress has acted and occupied the field, as it has here, the power of the states to act is prevented or suspended."

The other three cases and the principles applied therein have no application to the case under consideration. They dealt with entirely different situations. They were decided in accordance with the established rule that a state law enacted under any of its reserved powers, especially if under the police power, is not to be set aside as inconsistent with an act of Congress unless there is actual repugnancy or conflict, or unless the state under the guise of its police power is undertaking what amounts essentially to regulation of interstate commerce, or unless the state is imposing a direct burden upon that commerce.

The inapplicability of the cited cases to the one under consideration is made clear by contrasting those cases with the decision of this Court in *New York Central Railroad Co. v. Winfield,* 244 U. S. 147. In that case it was held that an award made under the New York Workmen's Compensation Act for injuries not attributable to negligence, received by an employee of an interstate railroad carrier while both were engaged in interstate commerce,

cannot be upheld even though the Federal Employers' Liability Act imposes liability only for injuries due to negligence.

The Court further held (page 153):

> "Thus the act is as comprehensive of injuries occurring without negligence, as to which class it impliedly excludes liability, as it is of those as to which it imposes liabilty. In other words, it is a regulation of the carriers' duty or obligation as to both. And the reasons which operate to prevent the states from dispensing with compensation where the act requires it equally prevent them from requiring compensation where the act withholds or excludes it."

In the last cited case, unlike the three other cases previously cited, the state undertook to regulate within a field that had been delegated to Congress under the Constitution. When Congress manifested its intention of exerting its exclusive power in that field, the state was without power in that field even though the state legislation did not conflict with the Act of Congress. In the three cases, the states were exercising reserved powers, powers not delegated to Congress, and they could continue to exercise those powers as long as they did not actually conflict with the exercise of powers delegated to Congress. The reason why the states cannot exercise their reserve powers in actual conflict with powers delegated to Congress is that the laws of the United States are made paramount and, therefore, when the exercise of

reserved powers by the states conflict with the exercise of powers delegated to Congress, the state powers necessarily become inoperative.

In the case at bar, the State Commission is endeavoring to regulate the instrumentalities of interstate commerce. The State Commission is acting within a field occupied by Congress. As held by this Court in the *First* and *Second Los Angeles Cases*, Congress has manifested its intention of exerting its exclusive power in this field by conferring upon the Interstate Commerce Commission the power to permit carriers to establish new union stations and to extend their lines, and the power to require carriers to make joint use of terminal main line tracks and to make connections between main lines. Since Congress has manifested its intention of regulating these instrumentalities of interstate commerce, the State Commission cannot lawfully exercise any power with respect to them though they may also be used in intrastate commerce. The state is seeking to piece out or supplement the regulation provided by Congress and as held in *New York Central Railroad Co. v. Winfield, supra,* this cannot be done.

As stated by this Court in *Southern Railway Company v. Railroad Commission of Indiana*, 236 U. S. 439, 448:

> "The test, however, is not whether the state legislation is in conflict with the details of the federal law or supplements it, but whether the

> state had any jurisdiction of a subject over which Congress had exerted its exclusive control."

The power sought to be exerted by the State Commission falls within the rule announced by this Court in *Lehigh Valley R. Co. v. Pub. U. Comm.*, 278 U. S. 24.

The State Commission's order does not rule "parochial matters" but it directly and seriously affects the "economical management and service" of the railroads. This Court held in the case last cited that *First Los Angeles Case, supra,*

> "makes a distinction between the local character of the usual elimination of grade crossings and the vital character from the standpoint of finance of the investment of large sums in the erection of a union station".

The Order of the State Commission Cannot Be Supported or Rendered Valid by Certificates Issued by the Interstate Commerce Commission.

The Railroads do not concede the validity of any certificates which have been issued by the Interstate Commerce Commission, but, if it be assumed for the purposes of argument that the certificates which have been issued are valid, the fact nevertheless remains that the State Commission has, as hereinbefore indicated, undertaken to exercise powers which have been confided to the Interstate Commerce Commission by the Interstate Commerce Act and to regulate matters

which are within the exclusive jurisdiction of the Federal Commission.

No power has been vested in the Interstate Commerce Commission which will permit it to delegate any power which it may possess to a State Commission, and therefore the State Commission cannot sustain its order because of any such reflected power. The Federal Commission may not combine any power confided to it nor share any such power with the State Commission, and cannot by issuing "hypothetical" or other certificates permitting the extension or abandonment of lines, confer any authority upon a State Commission to enter an order such as has been attempted in these proceedings. Any certificates which have been issued by the Interstate Commerce Commission, whether or not they be valid, cannot furnish the basis or warrant for an order of the State Commission to require or command the Railroads to take any action thereunder.

There Cannot Be a Divided Authority Between the Federal and State Commissions.

The State Court's decision is predicated upon the fundamental fallacy that the authority to regulate the establishment of new union stations, involving extensions, extensive changes, relocations, joint use of main line and terminal tracks, and interchange of traffic is divided between the Federal and State Commissions and that a state statute or order of a State Commission may be rendered valid or invalid by the action or inaction of a Federal Administrative Board.

Any power which the State Commission may exercise is derived from the Public Utilities Act of the State of California and particularly from Section 36 thereof, but the question does not relate only to the validity or invalidity of that statute in its application to interstate carriers as affected by the provisions of the Transportation Act of 1920, but also whether the power which the State Commission has sought to exercise invades the field which has been occupied by Congress.

The State Court has placed an erroneous interpretation upon the decisions of this Court in holding "that Congress has merely occupied the field of supervising and ascertaining the jurisdictional facts with relation to the establishment of such stations" (*Second State Court Case, supra,* R. p. 193).

The State Court virtually holds that the Interstate Commerce Commission only possesses the authority to determine whether the necessity for constructing a new union station exists, and that by issuing certificates it may authorize the carriers to establish such stations; that on the other hand the State Commission has the power to compel the establishment of a new union station whenever the Federal Commission has issued such certificates. In other words the State Court's decision is to the effect that the power of the State Commission to compel is dependent upon the Federal Commission's certificates to authorize. This is a rule predicated upon the division of power which this Court has held cannot exist.

"It is elementary and well settled that there can be no divided authority over interstate commerce, and that the Acts of Congress on that subject are supreme and exclusive."

Missouri Pacific R. Co. v. Stroud, 267 U. S. 404, 408.

The decisions rendered by this Court in the *First Los Angeles Case, supra,* and in the *Second Los Angeles Case, supra,* emphasize the rule that the jurisdiction of the Federal Commission is paramount and therefore must necessarily be exclusive.

Neither the Federal Nor the State Commissions Have Been Vested With Power to Give Effect to Orders Entered by the Other.

The Interstate Commerce Commission in *First Federal Commission Decision, supra,* made a finding (p. 460):

"That the present and future public convenience and necessity require and will require (among other things), the extension by defendants of their respective main lines of steam railroad in the City of Los Angeles, California, so as to reach and properly serve any union passenger station and terminal * * * (within a defined area) which they or any of them may construct and establish in accordance with a *lawful order* of the Railroad Commission of California * * *." (Italics ours.)

This decision was made subsequent to the time the California Commission's order was annulled by the State Court and the State Court's judgment had

been affirmed by this Court. That is, the State Commission had not at that time entered a "lawful order".

The proceedings before the California Commission were, over the objection of the Railroads, reopened, and the order under review subsequently entered which provided by its terms that "it should become effective from and after the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates or other appropriate order or orders covering and authorizing the construction, extensions and abandonments herein authorized or directed * * *," and it was provided that the issuance of such certificates by the said Commission "shall be and constitute a condition precedent to the effectiveness of said order of this commission" (*Third State Commission Decision, supra,* R. p. 134).

The State Commission's order was thus made dependent upon the issuance of certificates by the Interstate Commerce Commission.

Upon application by the California Commission the Interstate Commerce Commission reopened the proceedings and certified:

> "That the present and future public convenience and necessity require the construction (by the Railroads) of extensions of their main lines of railroad * * * so as to reach and serve a union passenger station and terminal, which they may construct in the Plaza District pursuant to the order

of the Railroad Commission of the State of California to that effect * * *." (R. pp. 153, 154.)

The result is that the order of the State Commission, under review, and the certificates of the Interstate Commerce Commission are expressly made interdependent.

There is no provision contained in the Interstate Commerce Act and the act is not susceptible to the interpretation that Congress intended to vest the Interstate Commerce Commission with power to issue certificates for the purpose of giving validity to orders of State Commissions or that Congress intended to vest the Interstate Commerce Commission with power to enter orders or certificates which should be dependent and conditioned upon the action of the subordinate state legislative tribunals.

Neither is there any provision contained in the Public Utilities Act of the State of California authorizing the State Commission to enter orders dependent upon action by the Interstate Commerce Commission.

The Federal and State Commissions are expressly vested with power to act within their respective fields. The amendments made to the Interstate Commerce Act by the Transportation Act, 1920, enlarged the powers of the Interstate Commerce Commission so as to vest it with full and complete authority to regulate the carriers engaged in interstate commerce and as this Court has held "puts the railroad systems of the

country more completely than ever under the fostering guardianship and control of the Interstate Commerce Commission".

The power of Congress is supreme and plenary and Congress has indicated in no uncertain terms that it intended to vest the Interstate Commerce Commission with power to regulate the carriers subject to its jurisdiction without interference by, or aid from, State Commissions and that it did not intend that the powers vested in Congress should be made dependent upon state action.

A diligent examination of the authorities has failed to reveal another case where the Interstate Commerce Commission has concluded that it has not been vested with a power which it has been requested to exercise and nevertheless sought to exercise such power indirectly by issuing certificates of public convenience and necessity, conditioned and dependent upon an order of a state commission with the expressed intention of having its certificates made mandatory by such order.

Likewise, this is the only instance where a state commission has by cooperating with the Interstate Commerce Commission attempted to assert a power of which it has been divested by the enactment of a Federal statute.

In the event the judgment of the State Court is affirmed, the inevitable result will be that state commissions will thereby be authorized to usurp powers

which have been expressly vested in the Interstate Commerce Commission and it will virtually authorize the Interstate Commerce Commission to indirectly require railroads to construct union stations and thereby exercise authority which this Court has held to be in excess of that conferred upon it by Congress.

To sustain the judgment of the State Court would result in a departure from the long line of decisions of this Court holding that the power of Congress to regulate interstate commerce is supreme and plenary, acknowledges no limitations other than those prescribed by the Constitution, that where Congress has occupied the field the state power ceases to exist and when Congress manifests its purpose to exercise its constitutional authority a state law, which attempts to occupy the same field or go further than Congress has seen fit to go, is rendered ineffective and is superseded.

II.

THE CERTIFICATES OF THE INTERSTATE COMMERCE COMMISSION ARE VOID.

(Specification of Error II.)

The order of the State Commission directed its attorney to "forthwith file with the Interstate Commerce Commission a copy of this order, together with such appropriate petition or application as may be necessary in the premises requesting and praying that the Interstate Commerce Commission issue such certificates or other appropriate order or orders as

may be requisite or proper in order to render this order effective" (R. p. 134).

In *Second Federal Commission Decision, supra,* 493 (R. p. 142), the Interstate Commerce Commission stated:

> "The California State Commission has filed with us its petition for final order. * * * The petition of the city of Los Angeles for the issuance of certificates and the making of final order is somewhat more extensive than the petition of the California State Commission, but the relief sought is the same."

The certificates declare that present and future public convenience and necessity require (1) the extension of main lines of railroad; (2) the abandonment of such portions of main lines of railroad as may become necessary to the proper operation of the union station; (3) the abandonment of main line operation of Southern Pacific Company on Alameda Street; (4) the use by the railroads of so much of the terminal main line tracks of any of the other railroads as may be necessary to the proper operation of a union passenger station—all as set out in the State Commission's order (R. pp. 131-134) and in its plan known as Exhibit 4 B (R. p. 267).

THE CERTIFICATES COULD NOT LAWFULLY BE ISSUED UNDER PARAGRAPHS (18), (19) AND (20) OF SECTION 1 OF THE INTERSTATE COMMERCE ACT.

They Were Issued Not On Application of the Railroads, But In Proceedings Adverse to Them and Over Their Protest.

The certificates were issued in a proceeding entitled *City of Los Angeles v. L. A. & S. L. R. R. Co.*, 142 I. C. C. 489 (R. pp. 135 and 153-4). In its report the Commission said that the railroads raised (R. p. 143) "the constitutional issues as to the power of this Commission under the Interstate Commerce Act".

Mr. Commissioner Brainerd in his dissenting opinion (R. p. 153) said, "Certificates of public necessity and convenience are proposed to be issued upon complaint by the City of Los Angeles and others, not upon the application of any carrier, and in fact over the objection and protest of all the defendant carriers".

Appellants could not by injunction or otherwise correct the Commission's action because it was not mandatory.

United States v. L. A. & S. L. R. Co., 273 U. S. 299.

Paragraphs (18), (19) and (20) of Section 1 Do Not Give the Commission Power to Issue Certificates Except On Application of Carriers.

In the *Second Los Angeles Case, supra*, this Court said (page 71): "It was as far as possible from

the purpose of the Court in its opinion (i. e. in *First Los Angeles Case, supra*) to indicate its views of the powers which the Commission could exercise adversely to the carriers in compulsory proceedings."

In *Texas, etc. Ry. Co. v. Gulf, etc. Ry. Co., supra,* the opinion contains the following, at page 272:

> "Paragraph 18 prohibits construction of an extension without obtaining the certificate. Paragraphs 19 and 20 provide that a carrier desiring to construct one may apply for the certificate."

In *C. C. C. & St. L. Ry. Co. v. United States,* 275 U. S. 404, 408 it is said:

> "These paragraphs ((18) to (21)) relate to the construction, acquisition, extension and abandonment of a railroad. They deal primarily with rights sought to be exercised by the carrier."

The purpose of paragraphs (18) to (20) was to protect interstate commerce from undue burdens or discrimination, *Colorado v. United States, supra;* to prevent carriers from weakening themselves by constructing or operating superfluous lines and to protect them from being weakened by another carrier constructing a competing line not required in the public interest.

Texas, etc. Ry. Co. v. Northside Belt Ry. Co., 276 U. S. 475.

The proceedings in the Congress show that applications under these paragraphs (18) to (20) were

intended to be made by the carriers. See quotations in MacVeagh Transportation Act, 1920, pp. 220, 221, 222.

The forms and orders issued by the Federal Commission for applications show that the Commission made no provision for applications by others than carriers (*Id.* pp. 224, 226, 230-3). We have found no other instance in which application has been made under paragraph (18) by other than a carrier. Similar provisions are found in many state statutes (see MacVeagh Transportation Act 1920, p. 220); and we have found no instance of application by other than a carrier under any of those statutes.

Mr. Reynolds at page 330 of his work entitled "Distribution of Regulation of Carriers between State and Nation" endorses the same interpretation.

Procedure to be followed in applying for certificates under paragraph (18) is found in paragraphs (19) and (20). Paragraph (19) provides for the application, the notices. No notice is to be served on the carrier—obviously because the carrier is to be the applicant.

When Congress intended that proceedings against carriers might be taken by the Commission on complaint or on its own motion such intention is clearly expressed as in paragraphs (9), (13), (15), (16) and (21) of Section 1; paragraph (10) of Section 5;

Section 13; paragraphs (3), (6), (7) and (13) of Section 15 and Section 16.

PARAGRAPH (21) OF SECTION 1 DOES NOT GIVE THE COMMISSION AUTHORITY TO ISSUE THE CERTIFICATES.

This paragraph provides:

> "The Commission may, after hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier by railroad subject to this Act, party to such proceeding, to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this Act, and to extend its line or lines * * *."

Clearly there is nothing contained in this provision of the statute authorizing certificates for abandonment of lines or relating to the joint use of lines.

We submit that the extension of lines is to be such as will enable the carrier to perform its duties as to car service but "car service" is expressly limited to transportation of property and has no reference to passenger business or, of course, to passenger stations. Paragraph (10) Section 1 provides:

> "The term 'car service' in this Act shall include the use, control, supply, movement, distribution, exchange, interchange, and return of locomotives, cars, and other vehicles used in the transportation of property, including special types of

equipment, and the supply of trains, by any carrier by railroad subject to this Act."

Had Congress intended to vest the Federal Commission with the power it has sought to exercise in these proceedings it "would not have left its intention to be evolved from obscure language but would have put it in explicit declaration and given notice of time and accommodation to it".

United States v. Pennsylvania R. Co., 242 U. S. 208.

"We should expect the intention to be manifested in plain terms and not to be inferred from varied interpretative provisions of uncertain scope."

Second Los Angeles Case, supra, p. 70.

In *Alabama & Vicksburg Ry. Co. et al. v. Jackson & Eastern Ry. Co., supra*, which involved the jurisdiction of the Interstate Commerce Commission over physical connections between railroads, this Court held that by paragraph (21) the Federal Commission was authorized to require a railroad to extend its line or lines for the purpose of making such connections. It was solely in this connection that the Court referred to the power of the Commission to require a carrier to extend its line or lines. The power of the Interstate Commerce Commission was enlarged in these particulars so as to render it certain that car-

riers subject to its jurisdiction could be required to provide interchange of cars and equipment and provide facilities by which such interchange could be facilitated.

The power to "authorize" given by paragraph (21) is coupled with and seems to be coextensive with the power to compel or "require"; but the Court in the *Second Los Angeles Case, supra,* did not intimate that mandamus might have been granted to order the Commission to act under paragraph (21) upon the city's complaint *so far as it sought an extension of lines.*

Again, the Commission's powers and all of them given by paragraph (21) may be put in action on its own initiative or on complaint. Certainly a complaint must allege some default, some failure of the carrier to fulfill its statutory duties. Now is it possible that the appellant L. A. & S. L. R. Co., operating on the east bank of the river, violated any provision of the Interstate Commerce Law by not bridging the stream and hauling its passenger trains to the west bank?

Unless the phrase "and to extend their lines" is limited to car service as above suggested, there would seem to be no standard set by the Act for the guidance of the Commission in exercising its powers as to extensions. Such a standard must be found in the Act.

Union Bridge Co. v. United States, 204 U. S. 364, 384, 385; cited and approved in *United States v. C. M. St. P. & P. R. Co.*, ___ U. S. ___ (not yet officially reported, see Oct. 1930, Term, No. 10, Advance Opinions, 75 L. Ed. 142, 145).

If the phrase "and to extend their lines" were intended to confer upon the Interstate Commerce Commission the power to compel extensions other than those needed to provide "car service", it would impose a construction on the Act which at once raises grave constitutional questions under the Fifth Amendment. Such a construction will be avoided.

United States v. Delaware etc. Co., 213 U. S. 366, 407-8;

State of Texas v. United States, 258 U. S. 204.

THE QUESTION OF THE VALIDITY OF THE CERTIFICATES WAS DECIDED BY THE STATE COURT AND IS DULY PRESENTED HERE.

The State Commission, on July 8, 1927, ordered that its command to install the tracks, connections and buildings for a complete union station should become effective "from and after the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates" etc. (R. p. 134). The statute of California (Sec. 67 of "Public Utilities Act", see Appendix p. xvii) provides that petitions for rehearing must be filed within thirty days after the Commission's de-

cision is rendered; that is in this case not later than August 7, 1927. Such petitions were filed July 16 and 21, 1927 (R. p. 3).

The certificates in question were not issued until May 8, 1928 (R. pp. 135, 153). Copies were filed by the State Commission in its offices without prior notice to the appellants (R. p. 4). Order denying rehearing was then entered by the State Commission May 26, 1928 (R. p. 4). Thereupon appellants petitioned the State Court for writs of certiorari to review the Commission's decision (R. p. 4).

The State Court in its opinion said:

> "The Railroad Commission of California then made the order under review here, which * * * was made conditional upon the issuance by the Interstate Commerce Commission of proper and sufficient certificates covering and authorizing the constructions, extension and abandonments authorized in said order of the Railroad Commission. Such certificates were issued later by the Interstate Commerce Commission * * * and the order of the Railroad Commission, to which the carriers are here objecting, became effective." (R. 189.)

Appellants then filed a joint petition for rehearing, in which they urged that the certificates were void and that the State Commission's order had not become effective. This petition was included in the record (R. p. 5) as it shows that the validity of the certificates

was challenged below but was excluded by the Clerk in printing. So much of the petition for rehearing as is necessary to show that this question was raised is printed in the Appendix (p. xix).

The petition was denied (R. p. 199). The question is therefore properly and directly presented for determination here.

State of Mo. v. Gehner, 281 U. S. 313.

Paragraphs (18)-(21), Section 1, read together and construed in harmony with the entire Act show clearly that paragraph (21) is not susceptible to the interpretation which has been placed upon it by the Interstate Commerce Commission, the California State Commission and the State Court, and leads to the conclusion that Congress has not vested the Federal Commission with power to grant certificates permitting the extension of main lines of railroads in proceedings either instituted by the Federal Commission upon its own motion or upon the relation of others than the carriers. The certificates which have been issued by the Federal Commission are therefore void and of no force and effect, and they cannot vitalize or make effective the order which has been entered by the State Commission requiring extensions of the lines of railroads essential to carry into effect the ultimate requirement of the State Commission's order to construct and maintain a union station.

III.

THE STATE COMMISSION'S ORDER DEPRIVES THE RAILROADS OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW AND DENIES THEM THE EQUAL PROTECTION OF THE LAWS AND TAKES THEIR PROPERTY FOR PUBLIC USE WITHOUT JUST COMPENSATION, IN CONTRAVENTION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

(Specification of Error III.)

The Railroads contend that the State Commission's order is beyond the field of constitutional legislation and that their rights have been impaired because the order requires them to abandon adequate terminal stations, station sites and facilities, substantial portions of their main lines of railroad, to acquire and dedicate to public use lands and rights of way, a large part of which is not now owned by the Railroads and none of which has been dedicated to public use, to extend their main lines of railroad to reach territory which they have not heretofore undertaken to serve, to permit the joint use by one or more of the Railroads of facilities owned by the others, to obtain franchises permitting the extension of their main lines across streets in the municipality, for which they have never applied and do not desire, all at the sole cost and expense of the Railroads, involving an expenditure of millions of dollars, with no provision for making adequate or any compensation therefor.

The principles for which the Railroads contend have been firmly established by the decisions of this Court and of the lower Federal Courts. In *Northern Pacific v. North Dakota,* 236 U. S. 585-595, it was held:

> "But, broad as is the power of regulation, the state does not enjoy the freedom of an owner. The fact that the property is devoted to a public use on certain terms does not justify the requirement that it shall be devoted to other public purposes, or to the same use on other terms, or the imposition of restrictions that are not reasonably concerned with the proper conduct of the business according to the undertaking which the carrier has expressly or impliedly assumed. If it has held itself out as a carrier of passengers only, it cannot be compelled to carry freight. As a carrier for hire, it cannot be required to carry persons or goods gratuitously. The case would not be altered by the assertion that the public interest demanded such carriage. The public interest cannot be invoked as a justification for demands which pass the limits of reasonable protection and seek to impose upon the carrier and its property burdens that are not incident to its engagement."

The principle announced in the case last cited was recognized in *Chesapeake & Ohio Ry. Co. v. Public Service Commission,* 242 U. S. 603, the Court saying, at page 606:

> "It well may be that the power of regulation which a State possesses over private property de-

voted to public use gives no warrant for requiring that an existing line of railroad lawfully devoted to a particular public use, such as carrying freight, shall be devoted to a further public use, such as carrying passengers."

These cases sustain the rule for which the Railroads contend, that while the states may make reasonable regulations of property which has been dedicated to public service, the states cannot constitutionally require the carriers to extend their main lines of railroad to reach territory which they have not heretofore undertaken to serve.

In rendering its decision in *Oregon R. & N. Co. v. Fairchild,* 224 U. S. 510, this Court held, page 528:

> "Since the decision in *Wisconsin M. & P. R. Co. v. Jacobson,* 179 U. S. 287, 45 L. ed. 194, 21 Sup. Ct. Rep. 115, there can be no doubt of the power of a state, acting through an administrative body, to require railroad companies to make track connection. But manifestly that does not mean that a commission may compel them to build branch lines, so as to connect roads lying at a distance from each other; nor does it mean that they may be required to make connections at every point where their tracks come close together in city, town, and country, regardless of the amount of business to be done, or the number of persons who may utilize the connection if built."

So also, in the case of *McNeill v. Southern Railway Company,* 202 U. S. 543, this Court held that a State

Commission lacks power to direct carriers to deliver all cars beyond their right of way onto a private site, and signified its approval of the decision by the Circuit Court of Appeals in *Central Stock Yards Co. v. Louisville & N. R. Co.*, 118 Fed. 113. The Court decided that the Commission could not compel the carrier to deliver cars and freight received from one state to another at a particular place and in a particular manner.

This Court has consistently guarded the constitutional rights where the states or their subordinate legislative tribunals have undertaken to overstep the bounds of the police power and endeavored to take property without providing just compensation therefor. This policy was forcibly expressed by this Court in rendering its decision in the case of *Pennsylvania Coal Co. v. Mahon*, 260 U. S. 393, 415:

> "The protection of private property in the 5th Amendment presupposes that it is wanted for public use, but provides that it shall not be taken for such use without compensation. A similar assumption is made in the decisions upon the 14th Amendment. *Hairston v. Danville & W. R. Co.*, 208 U. S. 598, 605, 52 L. ed. 637, 639, 28 Sup. Ct. Rep. 331, 13 Ann. Cas. 1008 When this seemingly absolute protection is found to be qualified by the police power, the natural tendency of human nature is to extend the qualification more and more until at last private property disappears. But that cannot be accomplished in this way under the Constitution of the United States."

In *Southern Bell Telephone Co. v. Town of Calhoun*, 287 Fed. 381, the District Court cited with approval *Atchison, Topeka and Santa Fe Ry. Co. v. California Railroad Commission*, 173 Cal. 577, in support of its judgment annulling a joint resolution adopted by the Assembly of South Carolina which required a telephone company to establish and maintain a telephone exchange for the convenience of other communities which were not served by the utility. The Federal Court held that the resolution adopted by the State Assembly could not be construed as an act to regulate the business of the utility nor the exercise of the police power of the state, but that it was

> "a bald attempt to require plaintiff to enter a new field of operation, to establish a business in a new territory which it has not heretofore entered or sought to enter, to invest its capital at places and under conditions, which neither its own desire nor the requirements of its charter, franchises, or contractual obligations in any way require * * *. It would be hard to conceive of anything more destructive of business enterprise and progress or more calculated to disturb the confidence of the individual in the security of his property and in the equal protection of the laws than to sustain such legislation."

The latest decision relating to this question is *Oregon, Washington Railroad & Navigation Co. v. U. S.* (District Court of the United States for the District of Oregon, Jan. 29, 1931), not yet officially published where a three judge court in

determining that the Interstate Commerce Commission does not have the authority to require carriers to extend their line or lines, relied upon *Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission, supra,* which the Court characterized as "an able and well considered opinion", and other cases hereinafter cited, and enjoined an order of the Interstate Commerce Commission from which it appeared that the "carrier was plainly required to devote its property to a service which it has never presumed to render and to a service entirely beyond the scope of the undertaking which it has expressly or impliedly assumed".

It is true that there are cases such as *People, ex rel. New York and Queens Gas Co. v. McCall,* 245 U. S. 345, and *New York ex rel v. Public Service Commission,* 269 U. S. 244, where companies furnishing gas, water, electric and telephone service have been required to extend their facilities, but as pointed out in *O. W. R. & N. Co. v. U. S., supra,* these decisions have no application in cases such as this.

A distinction is to be made between facilities provided and service rendered by a railroad company, and a water and gas company. A steam railroad does not "undertake" to bring its rails to the homes and places of business of its patrons in order to serve them. It "undertakes" to serve only those patrons who come to it. This distinction is made plain in the *Atchison case, supra,* and *Hollywood Chamber of Com-*

merce v. California Railroad Commission, 192 Cal. 307.

In *First Los Angeles Case, supra,* p. 346, this Court stated:

> "The extensions of the lines and main tracks of these railways under the plan which the State Commission has ordered are not great in distance, but they involve a new intramural destination for each railway, with important changes in the handling of interstate traffic and passengers. Great expense attends such changes of the main tracks in a crowded city, and they here carry with them, as necessarily incident thereto, the abandonment of available sites and of valuable existing passenger and freight stations, and the construction of a new union station elsewhere, * * *".

Whether the new location of a terminal be distant a mile or ten miles, the rule of the law is identical. In either case it is equally beyond the power of the State Commission to compel the railroad to provide a station at a new site, for the reason that this would be tantamount to compelling the railroad to provide a service which it never has undertaken to render. When a railroad establishes a terminal in a city it does not thereby undertake to move that terminal to any other point within the city, and cannot be compelled to do so provided the facilities which it has provided are adequate and convenient.

The question under discussion was presented to the State Court for determination at the time the Rail-

roads petitioned for writs of certiorari from the first order rendered by the State Commission, but the State Court did not find it necessary to dispose of these questions in that proceeding (*First State Court Case, supra,* 227.)

The points which were left undecided by the State Court in that case were each presented in this case, and, in support of the Railroads' contention, decisions heretofore rendered by the State Court and believed by the Railroads to be controlling were cited but given no consideration.

Decisions heretofore rendered by the California State Court correctly announce the rule which should govern and place an interpretation upon Section 36 of the Public Utilities Act of the State of California which should be applied in the case at bar.

In *First State Court Case, supra,* p. 228, Chief Justice Shaw in his concurring opinion says:

> "Entirely new tracks will have to be built to reach the new depot, and the land on which it is to be erected and on which the track is to be built will have to be acquired by the said companies, or by some subsidiary company in which they are all interested, and vast sums of money must be used in constructing the buildings and tracks required for the union depot.
>
> "If this be true it is equally beyond the power of the Interstate Commerce Commission to make the order. To require the railroad companies to

construct this depot and the tracks necessary therefor is equivalent to ordering them to dedicate new property to a public use. I know of no power which will justify the state in commanding a railroad company to thus acquire and dedicate property to a public use."

The rule announced in this concurring opinion of the Chief Justice had been announced in a former case, *Atchison, etc. Ry. Co. v. Railroad Commission, supra,* and was followed by the State Court in the later case, *Hollywood Chamber of Commerce v. Railroad Commission, supra.*

In *Pacific Telephone & Telegraph Co. v. Eshleman,* 166 Cal. 640, the Court had occasion to consider the constitutional limitations which had been placed upon the power of the Commission by the Federal and State Constitutions. The question there under consideration was whether the Commission had power to order a telephone company to make physical connection with two other telephone companies. The Court held that the order could not be made, and discussed in some detail the question of what exceeds the power of *regulation,* which is the limit of power of the Commission or any other agency of the state under the police power. Such order, the Court said, constitutes a confiscation or taking of property without compensation, and is, therefore, unconstitutional and in violation of the Fourteenth Amendment to the Constitution of the United States.

Pacific Telephone and Telegraph Co. v. Eshleman, supra; A. T. & S. F. Ry. Co. v. The Railroad Commission, supra; and *Hollywood Chamber of Commerce v. Railroad Commission supra,* sustain the contention that the California Railroad Commission has never had power under the state statute within constitutional limitations to require railroads to acquire and dedicate to public use lands and rights of way, extend their main lines of railroad to reach territory which they have not undertaken to serve, and to comply with the other requirements of the State Commission's order.

The principles established by the foregoing cases have been applied by other State Courts in cases where the facts were substantially similar to those of the case at bar:

Oklahoma Natural Gas Co. v. Oklahoma Corporation Com., 88 Okla. 51;

Oklahoma Natural Gas Co. v. Scott, et al., 115 Okla. 8;

Montgomery v. Southwestern Arkansas Telephone Co., 110 Ark. 480;

State v. Public Service Commission, 287 Mo. 522;

State, etc. v. Public Service Commission, 270 Mo. 429;

United Fuel Gas v. Public Service Commission, 105 W. Va. 603;

Public Service Commission of Maryland v. United Railway Co., 126 Md. 478;
Towers, et al. v. United Railways & Electric Co., 126 Md. 478;
People, ex rel. etc. v. Stevens, et al., 197 N. Y. 1, 10;
People, ex rel. etc. v. Stevens, et al., 203 N. Y. 7, 19.

In rendering its decision in the case at bar the State Court ignored the decisions cited which it had previously rendered, wherein this well established principle had been recognized, and erroneously predicated its decision on the cases which had been decided by the Courts of other states wherein the facts involved were essentially different from those in the case at bar.

The State Court cited a number of cases as supporting its decision, but the following analysis of those cases shows that in the light of the decisions of this Court and of previous decisions of the State Court, they do not justify the conclusion reached.

In *Railroad Commission of Alabama v. Northern Alabama Ry.*, 182 Ala. 357, the State Commission's order required several railroads either to construct a union station at a designated site or one of the railroads specified in the order to build the station and the others to join in the use upon such terms as might be agreed upon by all. The suing carrier was

not the one ordered to build the union station if all did not join therein. The carrier sought to enjoin the enforcement of an order requiring the establishment of a union station on the ground that the Alabama statute authorizing the Railroad Commission to require two or more railroads to erect a union depot was unconstitutional. The Court held that the carrier had no standing to raise the constitutional question because the order of the State Commission did not make it imperative upon complainant to join in the construction of the union depot.

In *Railroad Commission of Alabama v. Alabama Great Southern R. Co.*, 185 Ala. 354, the question which we are here considering was not controverted, and was not discussed by the Court. The power of the state to compel all railroads entering a given city to use a union station was conceded. The controverted question was whether the state could compel the railroads to jointly acquire the necessary land and to jointly construct the building. The Court said:

> "If the state has the power to which we have referred, and that power seems to be conceded, then it has the corresponding authority to put that power into exercise."

Dewey v. Atlantic Coast Line, et al., 142 N. C. 392 is not in point. That was an action by a group of property owners to enjoin the railroads from carrying out an order of the Commission to construct a union station at a site selected by the railroads, which

order the railroads desired to obey. It was held that the railroads were proceeding to do an authorized act in a lawful manner and that there was no legal wrong done the plaintiffs.

Griffin v. Southern Ry. Co., 150 N. C. 312, is equally irrelevant. In that case an injunction was sought by an abutting property owner to prevent the railroad from using a street to reach the union station referred to in the preceding case and it was held that plaintiff was not entitled to an injunction.

In *Corporation Commission v. Seaboard Air Line Ry. Co.*, 161 N. C. 270, the sole question reviewed (aside from a procedural question) was whether the validity of an order requiring two railroads to join in a union station could be attacked upon the ground that the erection of the station at the point designated would take away the business of a rival town. The case is not at all in point.

North Carolina Corp. Comm. v. Southern Ry. Co., 185 N. C. 435, is not at all in point. It concerned merely the validity of an order requiring two *intersecting* railroads to maintain a union station *at the junction point*. The question of the power of the state to compel an extension of lines or the use of the tracks of one railroad by another was not involved therein.

In *State v. St. Louis, etc. Ry. Co.* (Tex. Civ. App.), 165 S. W. 941, the question of the power of the state to compel a railroad to extend its lines to enter a union station does not appear to have been raised, nor was

the question of the power of a state to compel one railroad to permit another railroad to use its terminal main line tracks without providing for compensation. At any rate, these questions are not discussed in the opinion.

State v. St. Louis, etc. Ry. Co. (Tex. Civ. App.), 199 S. W. 829, involved further litigation in the matter reported in 165 S. W. 941, *supra*. The only questions discussed in the opinion are procedural questions which throw no light upon the questions which we are here considering. This decision was later reversed in *St. Louis etc. Ry. Co. v. State* (Tex. Com. App.), 255 S. W. 390, on a question of procedure.

Gulf, Colorado & Santa Fe Ry. Co. v. State (Tex. Civ. App.), 167 S. W. 192, is not in point herein because it related to two intersecting railroads and the order of the Commission was construed by the Court as requiring them to construct a union station "at or near the junction of their lines of railroad".

In *State v. Atlantic Coast Line, et al.*, 67 Fla. 441, the Court upheld an order of the State Commission requiring two railroads to build a union station at a point of intersection or crossing. The case did not involve the question whether carriers can be compelled to extend their lines to reach a new union station in a location not adjacent to their lines, nor did it involve the question whether a state can compel one railroad to permit the use of its terminal main line tracks by another carrier without making provision for compensation for such use.

In *State v. Jacksonville Terminal Co.*, 71 Fla. 295, the State Supreme Court held void an order of the Railroad Commission requiring several railroads and a terminal company to join in the erection of "a new, better and larger," terminal station upon a site apart from the site of the existing terminal station then in use. The Court's conclusion upon this point is correctly summarized in the last paragraph of the syllabus, as follows:

> "The statutes do not confer upon the Railroad Commissioners any power that may fairly be regarded as authorizing the Commissioners to make an order requiring a local terminal company and the railroad companies that are its patrons jointly to *change the location of the terminal company's depot or terminal,* * * *" (Italics added).

It is but fair to add that the Court does say in its opinion:

> "There is authority to compel the *railroads* entering the city to erect, operate and maintain a joint passenger terminal or union depot, even though the effect of such order would be to require the railroads using the present terminal depot to withdraw from it."

That statement, however, was pure *obiter dictum.*

Wisconsin, Minnesota and Pacific Railroad v. Jacobson, 179 U. S. 287, 302, is not at all in point. It involved solely an order requiring two *intersecting* railroads to provide, *at the point of intersection,* "facilities for the interchange of cars and traffic".

Denver & Rio Grande R. Co. v. City and County of Denver, 250 U. S. 241, is equally irrelevant.

In *Mayor & Aldermen of Worcester v. Norwich and Worcester R. R. Co.,* 109 Mass. 103, the Court predicated the power of the state to compel the railroads to extend their tracks so as to reach the union station upon the reserved power to alter, amend or repeal its charter.

Missouri O. & G. Ry. Co. v. State, 29 Okla. 640, did involve the question of the power of a state to compel a railroad to extend its lines to reach a union station, but that case was decided upon the authority of the Massachusetts case of *Mayor, etc. v. Norwich, etc., supra,* which, as we have shown, is contrary to the decisions of the Supreme Court of California and of this Court. The Oklahoma Court said that the doctrine of this Massachusetts case was cited with approval by this Court in *Northern Pacific R. Co. v. Dustin,* 142 U. S. 492. In this, however, the Oklahoma Court was mistaken. The Massachusetts case was not cited therein at all, and its doctrine certainly was not approved therein as the decision of this Court was quite the opposite of the decision of the Massachusetts Court.

The Oklahoma Court also held that the order of the State Commission could be justified on the ground that the same was a valid exercise of the police power of the state, citing in support thereof, *State v. Kansas City etc. Ry. Co.,* 32 Fed. 722. That case, however,

did not involve the question of the power of a state to compel an extension of lines to reach a union station. It was a suit to recover a penalty for the violation of an Act of Missouri requiring every railroad company in the state engaged in the transportation of persons or property, at all crossings and intersections of other railroads at the same grade, to erect, build and maintain, either jointly with the railroad crossed, or separately by each railroad, a depot under penalty of a forfeiture of a certain sum for failure to do so.

In *Chicago, etc., Ry. v. State,* 90 Okla. 173, the Oklahoma Court, by a four-to-three decision, affirmed the power of the Commission to require railroads to construct a union station, but it does not appear that any question was raised as to the power of the state to compel railroads to extend their lines in connection with or for the purpose of reaching such a union station. The Court said that the power in question

> "was settled and established by a long line of decisions of this court, both upon the theory the same was a proper exercise of its police power, *or of the right reserved to the Legislature to amend, alter, or repeal the charter of said railroad*" (Italics added).

The Court in the Oklahoma case also criticized as unsound and refused to follow the decision of the California Court in the *First State Court Case, supra,* which was affirmed shortly thereafter by this Court in the *First Los Angeles Case, supra.*

Missouri etc. Ry. Co. et al., v. State, 38 Okla. 401, involved an order of the Oklahoma Commission requiring three railroads to build a joint passenger depot at a location adjacent to the three roads. It was held that the order was unreasonable and unjust in that a union depot on the proposed site would increase the hazard of the employes and patrons of the railroad. No other question was considered in the case. The cause was remanded to the Commission for further proceedings.

Only two courts, those of Massachusetts and Oklahoma, have directly passed on the power of a state to compel a railroad to extend its lines for the purpose of joining in a union station at a point apart from its existing tracks, and these courts sustained the power of a state to do this upon the ground that it is comprised within the reserved power "to amend, alter or repeal charters". This Court has rejected the theory that a state may compel a railroad to so extend its main line tracks under the reserved power to amend, alter or repeal charters.

Superior Water Co. v. Superior, 263 U. S. 125, 136;

Chicago, etc. R. R. Co. v. Wisconsin, 238 U. S. 491, 501.

Under the decisions of this Court, a state cannot justify, under its police power, the requirement that a railroad extend its main line tracks for the purpose of joining in a union station at a point apart from

its existing tracks, without the payment of compensation for the property so taken.

In *Delaware, etc., Ry. Co. v. Morristown,* 276 U. S. 182, 193, this Court held:

> "The police power may be and frequently it is exerted to effect a purpose or consummate an enterprise in the public interest that requires the taking of private property; but, whatever the purpose or the means employed to accomplish it, the owner is entitled to compensation for what is taken from him."

The order of the State Commission requires the Railroads to extend their main line tracks for the purpose of joining in a union station at a point apart from their existing tracks. Assuming that the state has the power to order the establishment of a union station at Los Angeles and that the establishment of such a union station is in the public interest, this enterprise cannot be consummated without taking property of the Railroads for public use to the extent that it is necessary to abandon adequate terminal sites and facilities, substantial portion of their main lines of railroad and dedicate to public use lands and rights of way and to extend their main lines of railroad in order to reach a territory which they have not undertaken to serve. Under the decision last cited this property of the Railroads cannot be taken without providing compensation therefor.

As pointed out by this Court in the *Second Los Angeles Case, supra,* at p. 70, the expenditure of the large

amount of money necessary to construct the proposed union station and other facilities "will not bring with it corresponding increase in the railroad revenues". As a matter of fact, it cannot be said that the Railroads will receive any additional revenues by reason of extending their lines to reach the proposed union station, so manifestly, there will not be any revenues which can be regarded as compensation for the taking of their property. It appears from the record in this case (R. pp. 278, 279) that the passenger business of the Railroads has been decreasing and this Court may take judicial notice of the fact that the passenger revenues of these and other railroads have continued to decrease, due to the use of other means of transportation such as airplanes, motor busses and private automobiles.

The Interstate Commerce Commission in its 44th Annual Report to Congress, issued December 1, 1930, states:

> "With a plant developed to carry a great volume of passenger business, the railways find themselves confronted with a steady lessening in the volume of passenger travel by rail and consequently in gross revenues from that source. The passenger revenue of 1929 was over $414,000,000 less than that of 1920" (R. p. 78).

Page 138 from the same report shows gross revenue in 1920 to have been $1,286,613,000, and in 1929, $872,466,000, a decrease of 30 per cent.

The reports of the Railroad Commission of the State of California for the year ending June 30, 1927 (pp. 372, 378, 384) when compared with the report of the same Commission for the year ending June 30, 1929 (pp. 356, 362, 366) show a decrease in the passenger revenues of the three appellants of 15 per cent between June 30, 1927 and June 30, 1929.

Under such circumstances the prospect of receiving additional passenger revenues which might possibly be considered as compensation (assuming that additional revenues would be compensation) for the taking of this property is very problematical.

It is submitted that the cases decided by this Court, the lower Federal Courts and the State Courts upon which the Railroads rely sustain the contention that the State Commission may not lawfully, under the guise of exercising its police power or at all, require the Railroads which are now prepared to provide each for itself safe, adequate, convenient and sufficient facilities, to expend large sums in extending their lines and in providing other and different station facilities which are not within their absolute duties, and which requires them to furnish a service which they have not undertaken to render, or at a place where they have not undertaken to serve without adequate or any compensation.

Oregon R. R. & N. Co. v. Fairchild, supra.

It is not within the absolute duties of the Railroads to provide the facilities which the State Commission's

order requires them to construct. There is no imperative duty resting upon them to abandon existing railroad terminal facilities which are adequate, or can easily be made adequate, for the needs of their respective business and so far as the Southern Pacific and Santa Fe are concerned are adequate to accommodate the entire traffic of all three lines, in order to establish at enormous expense a union terminal at a new location, to gratify the civic pride of a city, or to solve a grade crossing problem.

The absolute duties of the Railroads are limited to furnishing reasonable and adequate facilities to their several patrons. If a station is too small a railroad may be required to enlarge it. If a station burns down a railroad may be required to replace it. These are matters within the realm of regulation under the police power. These are but carrying out obligations incurred when it entered upon the field of its activity, but to require a railroad company to abandon its own adequate facilities and to go elsewhere than on its own property and acquire additional land and construct new facilities to be used jointly by itself and other railroad companies is outside the realm of regulation, is not within the police power and impairs the constitutional rights of the Railroads.

THE RAILROADS ARE DENIED THEIR CONSTITUTIONAL RIGHTS BY FAILURE OF THE STATE COMMISSION TO PROVIDE COMPENSATION FOR THE USE OF THEIR RAILROAD PROPERTIES BY ONE ANOTHER.

The order of the State Commission involves:

> "The use by any defendant steam carriers of so much of the terminal main line track or tracks of any of the other defendant steam carriers in the city of Los Angeles, as may be incidental, necessary or convenient, to the proper operation of any such union passenger station * * *" (R. p. 132).

The tracks and other properties now owned by the Railroads in severalty, which must be appropriated and used jointly for the purpose of carrying the Commission's order into effect, appear from the Commission's Exhibits 4, 4-b, 5 and 6 (R. pp. 227, 267).

The Commission's order makes no provision whatsoever for payment of any compensation by the Railroads to one another for the use of their facilities, and no other provision of any kind for such compensation has been made.

Under the decisions of this Court the State Commission has no authority to require the Railroads to permit the use of their property by one another because that authority has been conferred upon the Interstate Commerce Commission by paragraph (4) of Section 3 of the Interstate Commerce Act. But if it be assumed that the California Commission, not-

withstanding the powers which have been vested in the Interstate Commerce Commission, is authorized to compel one railroad to permit the use of its tracks by another railroad, it has not exercised this power in accordance with statutory and constitutional requirements. It has failed to provide compensation for the use which it seeks to compel and, therefore, its order is void under the Constitution of the United States in that it involves a taking of property without due process of law.

Under the decisions of this Court, the tracks and other property of the railroad constitute private property, and it cannot be appropriated in whole or in part, except upon the payment of compensation. *Western Union Telegraph Company v. Pennsylvania Railroad Company, et al.*, 195 U. S. 540, in which case this Court held (page 570):

> "A railroad's right of way has, therefore, the substantiality of the fee, and it is private property even to the public in all else but an interest and benefit in its uses. It cannot be invaded without guilt of trespass. It cannot be appropriated in whole or in part except upon the payment of compensation. In other words, it is entitled to the protection of the Constitution, and in the precise manner in which protection is given. It can only be taken by the exercise of the powers of eminent domain, and a condition precedent to the exercise of such power is, we said, in *Sweet v. Rechel* (159 U. S. 380, 399), that the statute conferring it make provision for reasonable

compensation to the owner of the property taken."

In *Louisville & Nashville Railroad Co. etc. v. Central Stock Yards Company,* 212 U. S. 132, it was held (page 144):

"There remains for consideration only the third division of the judgment, which requires the plaintiff in error to receive at the connecting point, and to switch, transport and deliver all live stock consigned from the Central Stock Yards to any one at the Bourbon Stock Yards. This also is based upon the sections of the constitution that have been quoted. If the principle is sound, every road into Louisville, by making a physical connection with the Louisville and Nashville, can get the use of its costly terminals and make it do the switching necessary to that end, upon simply paying for the service of carriage. The duty of a carrier to accept goods tendered at its station does not extend to the acceptance of cars offered to it at an arbitrary point near its terminus by a competing road, for the purpose of reaching and using its terminal station. To require such an acceptance from a railroad is to take its property in a very effective sense, and cannot be justified, unless the railroad holds that property subject to greater liabilities than those incident to its calling alone. The Court of Appeals did not put its decision upon any supposed special liability, but upon the broad ground that the state constitution requires it and lawfully may require it of a common carrier by rail."

The same principle is involved in *Monongahela Navigation Co. v. United States*, 148 U. S. 312, 327.

The rule that the compulsory use of the property of one railroad by another is a taking of property, is well expressed in *Louisville & Nashville Railroad Company v. Interstate Railroad Company*, 108 Va. 502, 505:

> "It is clear that to take from a railroad company the exclusive right to the use of its property, or any part thereof, and limit its use therein to a particular purpose and give another railroad company an equal or joint right in the use of it for that purpose, is a taking within the meaning of the Constitution."

The Virginia case was cited with approval in *Southern Railway Company v. Shealy, et al.* (D. C. South Carolina), 18 F. (2d) 784. In that case the Court held that an order of a state railroad commission requiring an interstate railroad company to furnish the use of terminal facilities and tracks to another company was void on the ground that the power to regulate the use of terminal facilities and tracks of an interstate railroad is vested in the Interstate Commerce Commission to the exclusion of the states, and on the further ground that it failed to make any provision for compensation in violation of the constitutional provision against the taking of property without compensation.

In *Sand Springs Railroad Company, et al., v. Oklahoma Union Railway Company* (Okla.), 227 Pac. 430,

the Supreme Court held, as shown by the syllabus (by the Court):

> "An order of the Corporation Commission which authorizes the use of a portion of the main line of a railway in making a physical connection between two other railroads as provided for by section 2, art. 9, of the Constitution of Oklahoma, and by sections 5483 and 3458, Compiled Oklahoma Statutes 1921, which makes no provision for compensation being first made therefore, constitutes a taking of such company's property without compensation and in violation of the Constitution; such order being an attempted exercise of the power of eminent domain and not an exercise of the police power of the state."

The provisions of Section 41 of the Public Utilities Act of California, (printed in Appendix), authorizes the State Commission to compel one railroad to permit the use of its tracks by another railroad; but this section expressly provides that if the railroads fail to agree upon such use and the compensation therefor "the Commission may, by order, direct that such use be permitted, and prescribe a reasonable compensation * * * for the joint use".

Under the decisions of the Supreme Court of the State of California, the order of the State Commission requiring the railroads to permit the use of their tracks by one another without provision for compensation is a taking of the railroad's property without due process of law, contrary to the State Constitution and to that of the United States.

In *Pacific Telephone etc. Co. v. Eshleman, supra,* the order of the State Commission required the Pacific Telephone & Telegraph Company to permit a physical connection or connections to be made between its telephone lines and the lines of other companies. As stated by the Court (page 646),

> "the order of the Railroad Commission gives to the Tehama County Telephone Company and the Glenn County Telephone Company and their subscribers the use of all the extended long distance service maintained by the Pacific Telephone and Telegraph Company within the State of California,"

but the order of the Commission made no provision for compensation for such use. It was held that the order in question involved an exercise of the power of eminent domain and not of the police power; that the payment of compensation for such use must be made in advance of the actual taking; and that the order in question admittedly gave no compensation for the taking of the property of the Pacific Telephone and Telegraph Company, and was, therefore, void by force and virtue of the Constitution of the State and of the United States. The Court said (page 688):

> "But while the compensatory award in such cases rests with the railroad commission, it is still the duty of that commission to make compensation for such a taking. This not only by virtue of section 14 of article I of the constitution, but as well by the provisions of the Public Utilities Act itself. For example, in section 41,

dealing with the taking of property through the use thereof, the act declares that the railroad commission shall 'prescribe a reasonable compensation and reasonable terms and conditions for the joint use.' We do not find in the Public Utilities Act any intent to deprive a public utility, whose property is so taken, of the compensation *in advance,* which is the due, under our state constitution, of the owner of any other kind of property. * * * But no necessity, however urgent, justifies a taking of property without compensation."

Congress, in enlarging the powers of the Interstate Commerce Commission by the amendments contained in the Transportation Act, recognized that the "power and duty where the public interest requires, to make out of what is the passenger and freight station of one interstate carrier, a union station or depot," is as this Court held in *First Los Angeles Case, supra,* "a drastic limitation of a carrier's control and use of its own property." This power can not be exercised constitutionally unless, as provided by paragraph (4) of Section 3 of the Act, when one carrier is compelled to permit another to use its property it is a taking of such property for public use for which compensation must be provided, and that compensation for the use so required must "be ascertained on the principle controlling compensation in condemnation proceedings (and that) such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced."

Under the decision of this Court in *Louisville & Nashville R. Co. v. Central Stock Yards Co., supra,* "simply paying for the service of carriage" by the using carrier does not constitute compensation for compulsory use by that carrier of the costly terminals of another carrier and for the making of the switching necessary to afford that use. So, in this case, even if one railroad received payment for the service of carriage of the trains of another railroad over its terminal main line tracks, this would not constitute the compensation that must be provided for under the constitution for the compulsory use of the property of one of the railroads by another.

As above pointed out the order of the State Commission requires the joint use of the tracks of the Railroads by one another without any provision for compensation for such use. However desirable and however necessary a new union station may be for the City of Los Angeles, it does not justify the state in disregarding constitutional guarantees in consummating that improvement. As was so aptly said by this Court in *Pennsylvania Coal Co. v. Mahon, supra,* 416:

> "We are in danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change."

This Court also said in the same case (p. 415) that when the seemingly absolute protection of the Four-

teenth Amendment is found to be qualified by the police power

> "the natural tendency of human nature is to extend the qualification more and more until at last private property disappears. But that cannot be accomplished in this way under the Constitution of the United States."

The desire for a union station at Los Angeles has induced a forgetfulness, in the order of the State Railroad Commission requiring these Railroads to permit the joint use of their tracks without any compensation being provided therefor, of the constitutional guarantees which protect private property. This order exemplifies "the natural tendency of human nature" to extend the qualification by the police power of the seemingly absolute protection under the Fourteenth Amendment until private property disappears. If one railroad can be compelled to permit another to use its tracks without any provision being made for compensation for such use, "private property disappears". "But", as said by this Court, "that cannot be accomplished in this way under the Constitution of the United States".

It is submitted that under the decisions of this Court and those of the State Courts, the State Commission may not lawfully, under the guise of exercising its police power or at all, require the Railroads to permit the use of their terminal main line tracks by one another without compensation for this use.

The order of the State Commission requiring this joint use fails to provide for such compensation and it, therefore, violates the constitutional guarantees of the State Constitution and of the Fourteenth Amendment to the Constitution of the United States and is void.

THE STATE COMMISSION CANNOT IMPAIR THE RAILROADS' CONSTITUTIONAL RIGHTS UNDER THE GUISE OF EXERCISING ITS POLICE POWER REQUIRING THE RAILROADS TO ELIMINATE GRADE CROSSINGS.

The Commission's three decisions are interrelated (R. pp. 85, 121, 127). The State Court stated "a similar order was made by the Railroad Commission in 1921" (R. p. 186).

In its first decision the Commission stated as one of its conclusions:

> "We believe that the terminal unification and the grade crossing problem should not be dissociated and that the adoption of a plan providing for both problems is essential." (R. p. 51.)

In paragraph "1" of its original order the Commission in referring to the grade crossings of Southern Pacific Company on Alameda Street ordered "that public interest and safety require that such dangerous conditions at said crossing be eliminated by the erection and use of a new structure or structures, to wit, a union passenger station * * *" (R. p. 75).

In its second decision upon application for rehearing the Commission stated that in its original decision it was "of the opinion that the only method of eliminating grade crossings from Alameda Street is to remove all main line traffic therefrom, but found that this can only be safely, effectively and satisfactorily accomplished by the construction of a depot at the Plaza" (R. p. 87).

Further, under their finding "3. Union Terminal":

> "Much testimony was thereafter given, and much argument made to the effect that a complete and satisfactory solution of the grade crossing situation was dependent upon a union depot at the Plaza, and the Commission finds this to be the fact. * * * As to the Southern Pacific depot, its continued use does not conform to any satisfactory plan for the elimination of the grade crossings on Alameda street" (R. p. 88).

It is apparent that the State Commission's several orders, including the order under review, have been deliberately framed with a view of making it appear that the establishment of a union passenger station at the designated Plaza site is indispensable to the proper elimination of dangerous grade crossings in the City of Los Angeles and that the Commission is seeking to accomplish indirectly what it sought to do directly in the former order which was annulled.

The State Supreme Court in the *First State Court Case, supra,* held that there was no merit in the Commission's contention that:

"the establishment of a union terminal depot was an indispensable element in accomplishing the elimination of said grade crossings * * *" because "we can perceive no indispensable relation between the elimination of grade crossings and the establishment of union depot facilities, nor can we see any insurmountable difficulty why jurisdiction over the matter of eliminating grade crossings may not be exercised in a proper case consistently, and it may be concurrently, with the exercise of the authority which is vested by the act of Congress of 1920 in the Interstate Commerce Commission over the subject of union terminal depot facilities."

The State Court's first decision is flatly reversed in *Second State Court Case, supra,* and the State Court in effect decided that the State Commission in the exercise of "its unquestioned police power to regulate grade crossings in the interest of public safety" may trench with impunity upon and usurp the power vested in the Interstate Commerce Commission by Congress to regulate union stations.

The State Court in *Second State Court Case, supra* (R. pp. 195, 6), admitted that there had been no finding of fact made by the State Commission that the passenger station and facilities of the Southern Pacific Company were inadequate, but rested its decision so far as Southern Pacific is concerned upon the ground that "there is, assuredly, an implied finding to this effect in the order of the Railroad Commission under review".

The Court further states:

> "The argument of the Southern Pacific Company that the evidence does not show that its passenger depot is inadequate, but on the contrary shows it to be adequate for some years to come loses sight of the fact that an adequate building alone will not constitute adequate passenger terminal facilities, but that a satisfactory passenger terminal contemplates also that passenger trains may safely be directed to said terminal. The record discloses that passenger trains of the Southern Pacific Company can only reach its present passenger terminal by grade crossings along Alameda Street, which are so unsafe, impracticable and unreasonable, under all the surrounding circumstances, as to require elimination * * *".

There is no provision of the state law which authorizes the Commission or Court to make "implied findings" and the Court may not lawfully remedy a defect in the Commission's findings and order and thereby overcome the direct and uncontradicted evidence by any such procedure.

The right of the State Court to make "implied findings" is expressly negatived by the provisions of Section 67 of the Public Utilities Act and by the very decision of the State Court under review. The Court held:

> "Unless the action of the state commission is beyond its jurisdiction, its findings are binding upon us in this proceeding." (Quoting leading

case of *Pacific Tel. & Tel. Co. v. Eshleman, supra.*) (R. p. 196.)

This Court in *First Los Angeles Case, supra,* p. 341, approved the rule of law announced by the State Court in *First State Court Case,* holding that the question relating to the establishment of union depot facilities and the elimination of grade crossings should be considered separately upon the merits and that the state's police power to regulate grade crossings in the interest of public safety may not be exerted indirectly to require the establishment of a union station.

In *Lehigh Valley R. Co. v. Commissioners,* 278 U. S. 24, 35, this Court held:

> "The care of grade crossings is peculiarly within the police power of the States, *Railroad Comm'n. v. Southern Pacific Co.,* 264 U. S. 331, 341; and if it is seriously contended that the cost of this grade crossing is such as to interfere with or impair economical management of the railroad, this should be made clear. It was certainly not intended by the Transportation Act to take from the States, or to thrust upon the Interstate Commerce Commission, investigation into parochial matters like this, unless, by reason of their effect on economical management and service, their general bearing is clear. *Railroad Commission v. Southern Pacific Co.,* 264 U. S. 331. The latter case makes a distinction between the local character of the usual elimination of grade crossings and the vital character from the

standpoint of finance of the investment of large sums in the erection of a Union Station."

The State Commission's order requires the Railroads to expend at least ten million dollars in completing the work which they are required to perform. The State Commission cannot accomplish the ultimate object of eliminating grade crossings by requiring the Railroads to expend this large amount of money in the extravagant manner required by its order.

The establishment of a union passenger terminal in Los Angeles is not necessary to protect the public, and therefore the Commission's order cannot be regarded as a proper exercise of the police power of the state, but amounts to an attempt to appropriate the property rights of the carriers concerned without compensation, and therefore violates the constitutional rights of the Railroads guaranteed by the Fourteenth Amendment to the Constitution of the United States.

> "The public power to regulate railroads and the private right of ownership of such property co-exist and do not the one destroy the other; and where the power to regulate is so arbitrarily exercised as to infringe the rights of ownership the exertion is void because repugnant to the due process and equal protection clauses of the Fourteenth Amendment."
>
> *Atlantic Coast Line R. v. N. Car. Corp. Com'n.*, 206 U. S. 1.

IV (a).

THE STATE COMMISSION'S ORDER DEPRIVES SOUTHERN PACIFIC COMPANY OF ITS PROPERTY WITHOUT DUE PROCESS OF LAW AND TAKES ITS PROPERTY FOR PUBLIC USE WITHOUT JUST COMPENSATION BECAUSE THE NECESSARY FORCE AND EFFECT THEREOF IS TO REQUIRE IT TO ABANDON MAIN LINE TRACKS, ADEQUATE EXISTING PASSENGER STATION AND STATION GROUNDS, ACQUIRE A NEW STATION SITE, RIGHTS OF WAY LEADING THERETO AND JOIN IN CONSTRUCTING NEW TERMINAL FACILITIES AT A NEW LOCATION AND EXTEND ITS MAIN LINES OF RAILROAD, FOR THE PURPOSE OF PROVIDING THE SANTA FE AND LOS ANGELES & SALT LAKE COMPANIES WITH ADEQUATE PASSENGER DEPOTS.

(Specification of Error IV(a).)

SOUTHERN PACIFIC STATION IS ADEQUATE.

There is no evidence in the record, neither is there any finding made by the State Commission in any of its several orders, including the order under review, nor is there any finding in either of the two decisions and orders of the Interstate Commerce Commission that the passenger station or passenger station facilities of Southern Pacific Company are inadequate.

The State Commission in authorizing the construction of the present station in 1915 said:

> "The structure to be erected under these plans will be efficient and ample to provide for the probable passenger traffic coming to and depart-

ing from a city several times the present size of Los Angeles."

3 *Opinions R. R. Comm. of Calif.*, p. 929.

Mr. Richard Sachse, the Commission's Chief Engineer, testified that:

> "The present Southern Pacific passenger station and incidental facilities are adequate for the Southern Pacific alone for the present time and for perhaps 20 years in the future." (R. p. 265.)

The Commission's Exhibit No. 1, introduced in evidence (R. p. 221) and transmitted to this Court as an original exhibit (Praecipe Item 54(a), R. p. 7) discloses, on page 337, the following statement:

> "This information has been supplemented by data for a proposed union station at the Southern Pacific site, and comparison between this station and the Chicago station may be made. Based on Chicago experience, the twelve tracks at the Southern Pacific station will be sufficient for the 140 trains expected in the future."

The record discloses that the number of steam passenger trains on all railroads in and out of Los Angeles today is 30 per cent less than it was a few years ago (R. pp. 278 *et seq.*).

> "In 1915 the three roads were handling 126.3 trains per day. This decreased to 87.7 per day in 1920 and decreased further to 82 trains per day in 1925, a decrease of 30 per cent in 5 years." (R. p. 278.)

In 1925 the Southern Pacific and the Salt Lake were operating 52 trains per day in the existing Southern Pacific-Salt Lake station (R. p. 277). This is the Southern Pacific station.

The uncontradicted evidence shows that the present station will accommodate at least 140 trains per day (Commission's Exhibit No. 1, p. 337), and discloses that the maximum number of Southern Pacific trains handled to June, 1926, including extra sections and movie trains, was 47 in any any one day.

The Interstate Commerce Commission stated in *First Federal Commission Decision, supra,* at page 432:

> "It (the Southern Pacific Station) is well designed, and is adequate and suitable for present purposes."

No witness in these proceedings has testified to the contrary.

The Commission's Exhibit No. 1, page 235, referring to Southern Pacific Company's station, states:

> "The present station is well designed and is adequate and suitable for its purpose."

SOUTHERN PACIFIC COMPANY CANNOT BE COMPELLED TO INCUR THE EXPENSE OF PROVIDING ADEQUATE STATION FACILITIES FOR OTHER LINES.

The order is susceptible to no other interpretation than that the State Commission is seeking to accom-

plish indirectly what it sought to do directly in its former order, which was annulled, eliminate grade crossings on Alameda Street and provide adequate passenger station *buildings* for The Atchison, Topeka and Santa Fe Railway and Los Angeles & Salt Lake Railroad. It is admitted by both the last-named railroads that their passenger station *buildings* are inadequate, but the evidence and the State Commission's findings show conclusively that in other respects the passenger terminal facilities of those carriers are adequate.

Whatever the necessities of these last-named railroads may be, the State Commission cannot constitutionally enter an order requiring Southern Pacific Company to join in the expense of establishing a union passenger station to meet their requirements.

So far as concerns the conclusion of the State Court to the effect that because the Southern Pacific must spend its money either in a change of its tracks or a change in its terminal, the Commission had power to order that it be spent for a union station "because of the need for a new terminal by the other two carriers", we submit is but to say that the Southern Pacific is required to make the expenditures for the direct benefit of the other carriers. But the Southern Pacific in law is not responsible for the Santa Fe's and Salt Lake's needs. Obviously, therefore, an order, based on this ground, is an invasion of the Southern Pacific's constitutional rights.

IV(b).

THE STATE COMMISSION'S ORDER DEPRIVES THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY AND LOS ANGELES & SALT LAKE RAILROAD COMPANY OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW AND DEPRIVES THEM OF THE EQUAL PROTECTION OF THE LAWS, BECAUSE THE NECESSARY FORCE AND EFFECT THEREOF IS TO REQUIRE THESE RAILROADS TO JOIN WITH OTHER RAILROADS IN THE CONSTRUCTION OF A UNION STATION TO ACCOMPLISH THE PURPOSE OF ELIMINATING GRADE CROSSING OF SOUTHERN PACIFIC COMPANY ON ALAMEDA STREET, WITH WHICH THEY HAVE NO CONCERN.

(Specification of Error IV(b).)

There is no evidence, neither is there any finding that the present terminal *sites* of the Santa Fe and Salt Lake lines are inadequate. In fact the report of the Commission's engineers states that the Santa Fe site is "too large" for the location of a union station (R. p. 60). It is true that the evidence discloses that the present terminal passenger station *buildings* of these railroads are inadequate, and further that these railroads have been and are now ready, willing and anxious to erect suitable buildings upon those sites when permitted to do so by the Commission. The necessary effect of the Commission's order is to compel the Santa Fe and Salt Lake Railroads, although by indirection, to expend millions of dollars to correct a grade crossing situation upon the lines of the Southern Pacific Company.

Yet the California Commission by its order has attempted to force, uncompensated, a relocation of these expensive Santa Fe facilities in order to separate highway grade crossings traversing the line of a rival railroad system.

We have hereinbefore indicated wherein the Commission has endeavored to support their order requiring the Railroads to establish a union station by exercising the power which they possess to compel the elimination of grade crossings existing upon the lines of Southern Pacific Company, and pointed to the decisions of the State Court and of this Court wherein it is held that these two subjects of regulation are unrelated and should be considered and determined separate and apart from one another.

All grade crossings of the Santa Fe and the Salt Lake on the westerly and easterly banks of the Los Angeles River have been eliminated (R. p. 128); and so far as these railroads are concerned all grade crossing problems have been solved.

To compel the Santa Fe Railway and the Salt Lake Railroad to incur the expense of changing their long-established method of operation and to join in the expense of constructing, maintaining and operating a union station and to abandon adequate passenger terminal sites, takes the property of these railroads without due process of law and denies them the equal protection of the law in violation of the

Fourteenth Amendment to the Constitution of the United States.

The power sought to be exercised goes not merely to the regulation of the Railroads and their business, but passes beyond proper regulation and amounts to a taking of their property, and the order is therefore referable, not to the police power, but to the power of eminent domain.

Atchison, etc. Ry. Co. v. Railroad Comm., supra;
Pacific T. & T. Co. v. Eshleman, supra;
Hollywood Chamber of Commerce v. R. R. Comm., supra;
Oregon R. & N. Co. v. Fairchild, supra.

In deciding this question the Court sustains the Commission's contention

> "That each company is ordered to join in the erection of the union station because of its own inadequacy in terminal passenger facilities * * * *"

and holds that

> "The evidence, indeed the admitted facts, show that the station facilities of two of the carriers are inadequate and that the grade crossings of the Southern Pacific, the third carrier, are dangerous to life and limb and unsuited to the surroundings." (R. 197.)

These findings are wholly unsupported by the evidence. These carriers admitted that their respective station *buildings* are inadequate, but other-

wise contended that their passenger station facilities are entirely adequate, both as to size, capacity and track layout. All that remains to be done in order to adequately provide for the accommodation of their passengers is to erect suitable station buildings. There is no evidence in the record to the contrary.

The Court expressly sustains the Commission's findings and order by holding that the grade crossings of the Southern Pacific "could only be changed by a complete and expensive change of trackage or a change of terminal and the Commission adopted the latter method because of the need of a new terminal by the other two carriers * * *", and decides that there was nothing unreasonable or arbitrary in the findings or order of the Commission.

The fact that these two carriers must necessarily expend money in constructing separate and new station buildings on their respective passenger terminal sites does not warrant the Commission in ordering that this money should be expended in constructing a union station at a point not now reached by these Railroads, because the Southern Pacific Company must make an expensive "change of trackage or a change of terminal * * * to eliminate grade crossings on its line". There is no warrant in the statute for such a compulsory order; and if a statute were found upon the books which vested the Commission with power to compel one or more carriers to expend their own money to relieve the necessities of another,

such statute would do violence to the constitutional rights of these two railroads. The Commission's order is therefore void and the State Court erred in not entering a judgment annulling it.

Respectfully submitted,

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(APPENDIX FOLLOWS)

APPENDIX.

Pertinent Provisions of the Interstate Commerce Act as Amended by the Transportation Act, 1920.

(41 U. S. Stat. at Large, C. 91, pp. 476-478, Sec. 402, 49 U. S. C. A., Sec. 1, pars. (18) to (22), pars. (18) to (22) of Section 1 of Interstate Commerce Act.)

SEC. 402. The paragraphs added to section 1 of the Interstate Commerce Act by the Act entitled "An Act to amend an Act entitled 'An Act to regulate commerce,' as amended, in respect of car service, and for other purposes," approved May 29, 1917, are hereby amended to read as follows:

* * * * * * *

"(18) After ninety days after this paragraph takes effect no carrier by railroad subject to this Act shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this Act over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this Act shall abandon all or any portion of

a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity permit of such abandonment.

"(19) The application for and issuance of any such certificate shall be under such rules and regulations as to hearings and other matters as the Commission may from time to time prescribe, and the provisions of this Act shall apply to all such proceedings. Upon receipt of any application for such certificate the Commission shall cause notice thereof to be given to and a copy filed with the governor of each State in which such additional or extended line of railroad is proposed to be constructed or operated, or all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned, with the right to be heard as hereinafter provided with respect to the hearing of complaints or the issuance of securities; and said notice shall also be published for three consecutive weeks in some newspaper of general circulation in each county in or through which said line of railroad is constructed or operates.

"(20) The Commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment

the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, operation, or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulating body of the State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than $5,000 or by imprisonment for not more than three years, or both.

"(21) The Commission may, after hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier by railroad subject to this act, party to such proceeding, to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this Act, and to extend its line or lines: *Provided,* That no such authoriza-

tion or order shall be made unless the Commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public. Any carrier subject to this Act which refuses or neglects to comply with any order of the Commission made in pursuance of this paragraph shall be liable to a penalty of $100 for each day during which such refusal or neglect continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

"(22) The authority of the Commission conferred by paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation."

(41 U. S. Stat. at Large, C. 91, pp. 479-480, Sec. 405, 49 U. S. C. A., Sec. 3, pars. (3) and (4), pars. (3) and (4) of Section 3 of Interstate Commerce Act.)

SEC. 405. * * * * * * *

The second paragraph of section 3 of the Interstate Commerce Act is hereby amended to read as follows:

"(3) All carriers, engaged in the transportation of passengers or property, subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares, and charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper.

"(4) If the Commission finds it to be in the public interest and to be practicable, without substantially impairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including mainline track or tracks for a reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or

other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the case may be."

Pertinent Provisions of the Constitution of the State of California.

(Const. of Cal., Art. XII, Secs. 22 and 23.)

SEC. 22. There is hereby created a railroad commission which shall consist of five members and which shall be known as the railroad commission of the State of California. The commission shall be appointed by the governor from the state at large; *provided,* that the legislature, in its discretion, may divide the state into districts for the purpose of such appointments, said districts to be as nearly equal in population as practicable; *and provided, further,* that the three commissioners in office at the time this section takes effect shall serve out the term for which they were elected, and that two additional commissioners shall be appointed by the governor immediately after the adoption of this section, to hold office during the same term. Upon the expiration of said term, the term of office of each commissioner thereafter shall be six years, except the commissioners first appointed hereunder after such expiration, one of whom shall be appointed to hold office until January 1, 1917, two until January 1, 1919, and two until January 1, 1921. Whenever a vacancy in the office of commissioner shall occur the governor shall forthwith appoint a qualified person to fill the same for the unexpired term. Commissioners appointed for regular terms shall at the beginning of the term for which they are appointed, and those appointed to fill vacancies, shall, immediately upon their appointment, enter upon the duties of their offices. The legislature shall fix the salaries of the commissioners,

but pending such action the salaries of the commissioners, their officers and employees shall remain as now fixed by law. The legislature shall have the power, by a two-thirds vote of all members elected to each house, to remove any one or more of said commissioners from office for dereliction of duty or corruption or incompetency. All of said commissioners shall be qualified electors of this state, and no person in the employ of or holding any official relation to any person, firm or corporation, which said person, firm or corporation is subject to regulation by said railroad commission and no person owning stock or bonds of any such corporation or who is in any manner pecuniarily interested therein, shall be appointed to or hold the office of railroad commissioner. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission. The act of a majority of the commissioners when in session as a board shall be deemed to be the act of the commission; but any investigation, inquiry or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner designated for the purpose by the commission, and every order made by a commissioner so designated, pursuant to such inquiry, investigation or hearing, when approved or confirmed by the commission ordered filed in its office shall be deemed to be the order of the commission.

Said commission shall have the power to establish rates of charges for the transportation of passengers

and freight by railroads and other transportation companies, and no railroad or other transportation company shall charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or freight, or for any service in connection therewith, between the points named in any tariff of rates, established by said commission, than the rates, fares and charges which are specified in such tariff. The commission shall have the further power to examine books, records and papers of all railroad and other transportation companies; to hear and determine complaints against railroad and other transportation companies; to issue subpœnas and all necessary process and send for persons and papers; and the commission and each of the commissioners shall have the power to administer oaths, take testimony and punish for contempt in the same manner and to the same extent as courts of record; the commission may prescribe a uniform system of accounts to be kept by all railroad and other transportation companies.

No provision of this constitution shall be construed as a limitation upon the authority of the legislature to confer upon the railroad commission additional powers of the same kind or different from those conferred herein which are not inconsistent with the powers conferred upon the railroad commission in this constitution, and the authority of the legislature to confer such additional powers is expressly declared to be plenary and unlimited by any provision of this constitution.

The provisions of this section shall not be construed to repeal in whole or in part any existing law not inconsistent herewith, and the "railroad commission act" of this state approved February 10, 1911, shall be construed with reference to this constitutional provision and any other constitutional provision becoming operative concurrently herewith. And the said act shall have the same force and effect as if the same had been passed after the adoption of this provision of the constitution and of all other provisions adopted concurrently herewith, except that the three commissioners referred to in said act shall be held and construed to be the five commissioners provided for herein. (Amendment adopted October 10, 1911.)

SEC. 23. Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any commercial railroad, interurban railroad, street railroad, canal, pipe line, plant, or equipment, or any part of such railroad, canal, pipe line, plant, or equipment within this state, for the transportation or conveyance of passengers, or express matter, or freight of any kind, including crude oil or for the transmission of telephone or telegraph messages, or for the production, generation, transmission, delivery or furnishing of heat, light, water or power or for the furnishing of storage or wharfage facilities, either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the railroad commission as may be provided

by the legislature, and every class of private corporations, individuals, or associations of individuals hereafter declared by the legislature to be public utilities shall likewise be subject to such control and regulation. The railroad commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the legislature, and the right of the legislature to confer powers upon the railroad commission respecting public utilities is hereby declared to be plenary and to be unlimited by any provision of this constitution. From and after the passage by the legislature of laws conferring powers upon the railroad commission, respecting public utilities, all powers respecting such public utilities vested in boards of supervisors, or municipal councils, or other governing bodies of the several counties, cities and counties, cities and towns, in this state, or in any commission created by law and existing at the time of the passage of such laws, shall cease so far as such powers shall conflict with the powers so conferred upon the railroad commission; *provided, however,* that this section shall not affect such powers of control over public utilities as relate to the making and enforcement of local, police, sanitary and other regulations, other than the fixing of rates, vested in any city and county or incorporated city or town as, at an election to be held pursuant to law, a majority of the qualified electors of such city and county, or incorporated city or town,

voting thereon, shall vote to retain, and until such election such powers shall continue unimpaired; but if the vote so taken shall not favor the continuation of such powers they shall thereafter vest in the railroad commission as provided by law; *and provided, further,* that where any such city and county, or incorporated city or town, shall have elected to continue any of its powers to make and enforce such local, police, sanitary and other regulations, other than the fixing of rates, it may, by vote of a majority of its qualified electors voting thereon, thereafter surrender such powers to the railroad commission in the manner prescribed by the legislature; *and provided, further,* that this section shall not affect the right of any city and county or incorporated city or town, to grant franchises for public utilities upon the terms and conditions and in the manner prescribed by law. Nothing in this section shall be construed as a limitation upon any power conferred upon the railroad commission by any provision of this constitution now existing or adopted concurrently herewith. (Amendment adopted November 3, 1914.)

Pertinent Provisions of Public Utilities Act of the State of California.

(Statutes of California 1915, C. 91, p. 115.)

SEC. 13. (b) Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable. (p. 122)

SEC. 22. (a) Every common carrier shall afford all reasonable, proper and equal facilities for the prompt and efficient interchange and transfer of passengers, tonnage and cars, loaded or empty, between the lines owned, operated, controlled or leased by it and the lines of every other common carrier, and shall make such interchange and transfer promptly without discrimination between shippers, passengers or carriers either as to compensation charged, service rendered or facilities afforded. Every railroad corporation shall receive from every other railroad corporation, at any point of connection, freight cars of proper standard and in proper condition, and shall haul the same either to destination, if the destination be upon a line owned, operated or controlled by such railroad corporation, or to point of transfer according to route billed, if the destination be upon the line of some other railroad corporation.

Nothing in this section contained shall be construed as in anywise limiting or modifying the duty of a

common carrier to establish joint rates, fares and charges for the transportation of passengers and property over the lines owned, operated, controlled or leased by it and the lines of other common carriers, nor as in any manner limiting or modifying the power of the commission to require the establishment of such joint rates, fares and charges. (p. 128)

SEC. 30. Every public utility shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the commission in the matters herein specified, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule or regulation by all of its officers, agents and employees. (p. 132)

SEC. 31. The railroad commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in the state and to do all things, whether herein specifically designated or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction. (p. 132)

SEC. 36. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public

utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the commission orders the erection of a new structure, it may also fix the site thereof. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the commission has ordered to be erected, require joint action by two or more public utilities, the commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the commis-

sion shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured. (p. 134)

SEC. 41. Whenever the commission, after a hearing had upon its own motion or upon complaint of a public utility affected, shall find that public convenience and necessity require the use by one public utility of the conduits, subways, tracks, wires, poles, pipes or other equipment, or any part thereof, on, over, or under any street or highway, and belonging to another public utility, and that such use will not result in irreparable injury to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment or in any substantial detriment to the service, and that such public utilities have failed to agree upon such use or the terms and conditions or compensation for the same, the commission may by order direct that such use be permitted, and prescribe a reasonable compensation and reasonable terms and conditions for the joint use. If such use be directed, the public utility to whom the use is permitted shall be liable to the owner or other users of such conduits, subways, tracks, wires, poles, pipes or other equipment for such damage as may result therefrom to the property of such owner or other users thereof, and the commission shall have power to ascertain and direct the payment, prior to such use, of fair

and just compensation for damage suffered, if any. (p. 136)

SEC. 67. Within thirty days after the application for a rehearing is denied, or, if the application is granted, then within thirty days after the rendition of the decision on rehearing, the applicant may apply to the supreme court of this state for a writ of certiorari or review (hereinafter referred to as a writ of review) for the purpose of having the lawfulness of the original order or decision or the order or decision on rehearing inquired into and determined. Such writ shall be made returnable not later than thirty days after the date of the issuance thereof, and shall direct the commission to certify its record in the case to the court. On the return day, the cause shall be heard by the supreme court, unless for a good reason shown the same be continued. No new or additional evidence may be introduced in the supreme court, but the cause shall be heard on the record of the commission as certified to by it. The review shall not be extended further than to determine whether the commission has regularly pursued its authority, including a determination of whether the order or decision under review violates any right of the petitioner under the constitution of the United States or of the State of California. The findings and conclusions of the commission on questions of fact shall be final and shall not be subject to review; such questions of fact shall include ultimate facts and the findings and conclusions of the commission on reasonableness and discrimina-

tion. The commission and each party to the action or proceeding before the commission shall have the right to appear in the review proceeding. Upon the hearing the supreme court shall enter judgment either affirming or setting aside the order or decision of the commission. The provisions of the Code of Civil Procedure of this state relating to writs of review shall, so far as applicable and not in conflict with the provisions of this act, apply to proceedings instituted in the supreme court under the provisions of this section. No court of this state (except the supreme court to the extent herein specified) shall have jurisdiction to review, reverse, correct or annul any order or decision of the commission or to suspend or delay the execution or operation thereof, or to enjoin, restrain or interfere with the commission in the performance of its official duties; *provided*, that the writ of mandamus shall lie from the supreme court to the commission in all proper cases (p. 161).

Portions of Petition for Rehearing filed in the Supreme Court of the State of California, June 16, 1930, Showing That the Question of the Validity of the Certificates Issued by the Interstate Commerce Commission Was Raised in That Court.

The Atchison, Topeka & Santa Fe Railway Company, a corporation, et al., Petitioners, vs. Railroad Commission of the State of California, et al., Respondents.	S. F. Nos. 13,056, 13,057 and 13,058

PETITION FOR REHEARING.

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* * * * * * * *

II.

THE COURT RULED ERRONEOUS STATEMENTS OF FACT RESPECTING THE INTERSTATE COMMERCE COMMISSION'S CERTIFICATES.

At page 466 of the report of your opinion the following appears:

> "The certificates on their face are proper and sufficient and comply with the decision of the Supreme Court of the United States; the Railroad Commission is so considering them, as did the Interstate Commerce Commission. *No question*

> *has been raised by anyone as to their insufficiency* and since they had been issued and were in existence and became a part of the order of the Railroad Commission at the time the writ of review was issued by this court no uncertainty existed at such time as to their content *and no dispute existed as to their sufficiency.*" (Italics ours.)

We respectfully submit that the above words which we have italicized are contrary to the facts as will plainly appear from the following statement:

The Interstate Commission assumed to issue those certificates in a proceeding brought against the carriers, not on the application of the carriers, but over their objection and protest. See the Interstate Commerce Commission opinion and report reprinted in respondent's brief, volume 2, pages 221 to 256, where the order for the certificates is set out at page 240, and the certificates themselves at page 254, and the fact that they were issued over our objection appears at page 249.

The first words on page 41 of our brief in support of petitions for writs of review, are these:

> "Under subdivisions 18 to 21 of section 1 of the Act, (meaning Interstate Commerce Act) no extensions of line nor abandonments of operations may be made except upon *applicants filed by the interested carriers* and certificates obtained from the Interstate Commerce Commission." (Italics ours.)

At page 210 of the Railroad Commission's brief counsel for the Commission say:

> "But, say the carriers, the Interstate Commerce Commission may not even issue 'certificates' under the Interstate Commerce Act save on application by themselves. Any action taken except on such voluntary application is, they urge, void and of no effect.
>
> "This same argument was strenuously made by these carriers when they appeared before the Interstate Commerce Commission, and their brief before that body prior to its last decision contains much argument to this effect. Suffice it to say here, however, that the Interstate Commerce Commission was not impressed with these arguments."

In a note at the bottom of page 211 it is said:

> "That the matter was fully considered and passed upon by the Interstate Commerce Commission is evident not only from its action in issuing the certificates in question, but also from the fact that the only dissenting commissioner (Brainerd) based his dissent upon this ground."

We reproduced and amplified in our reply brief what we had submitted to the Interstate Commerce Commission. See pages 60 to 72 of our reply brief under the heading, *"The Certificates of the Interstate Commerce Commission Are Void."* See also pp. 72-3. In that part of our reply brief we cited cases from the United States Supreme Court indi-

cating that the provisions for the issuance of certificates of convenience and necessity were for use by the carriers. We also referred to analogous provisions in the Interstate Commerce Commission Act; referred to the proceedings in Congress on the Transportation Act 1920, and to the orders and instructions issued by the Commission for applications for certificates of convenience and necessity.

The opinion of the U. S. Supreme Court, in the second Union Station case, intimates a lack of power in the Federal Commission to issue such certificates "adversely to the carriers in compulsory proceedings." See appendix to brief of *amici curiae*, p. xix.

We will not weary the court by the reproduction of this argument, but we wish to impress upon the court as thoroughly as we can our view that the statements quoted from the court's opinion, namely, that no question has been raised by anyone as to the sufficiency of the certificates, are directly contrary to the fact.

III.

The Court Erred in Holding That the Certificates of the Interstate Commerce Commission Are Proper and Sufficient on Their Face.

We respectfully ask your further consideration of the first sentence quoted above from your opinion at page 466, namely:

> "the certificates on their face are proper and sufficient and comply with the decision of the Supreme Court of the United States."

Taking this in connection with the further statement that no question has been raised by anyone as to their sufficiency, we are led to believe that no consideration has been given to the question raised and argued in the briefs, that no valid certificates could issue except on the application of the carriers. For, as already shown, it does appear fully in these proceedings that the certificates were not so issued, but in an adversary proceeding against carriers. Indeed this appears from the very entitling of the proceedings in which they were issued. We believe that the pages of the brief, to which we have above referred (Petitioners' Reply Brief, pages 60 to 73) show that the Interstate Commerce Commission had no jurisdiction to issue the certificates or any of them except on carrier's application, and that the certificates are, therefore, not on their face proper or sufficient.

IV.

THE COURT ERRED IN HOLDING THAT THE ORDER OF THE RAILROAD COMMISSION OF CALIFORNIA HAS BECOME EFFECTIVE.

At page 461 of the report of your opinion the following paragraph appears:

> "The Railroad Commission of California then made the order under review here which was based upon its own findings and the above findings of the Interstate Commerce Commission and was made conditional upon the issuance by the Interstate Commerce Commission of proper and sufficient certificates covering and authorizing the con-

> structions, extension, and abandonments authorized in said order of the Railroad Commission. Such certificates were issued later by the Interstate Commerce Commission after a further hearing and the order of the Railroad Commission, to which the carriers are here objecting, *became effective.*" (Italics ours.)

We had entertained some doubt as to whether or not the validity of the certificates in question could be determined in this proceeding for if the court should hold the State Commission's order valid it would be unnecessary to go further and say whether or not it has become effective; and if the court should hold the order invalid it would be equally unnecessary to decide whether or not if it had been valid it would have become effective.

But it did appear to us that the order of the Railroad Commission was conditional, indefinite and uncertain; that the carriers should not be required at their peril to determine whether subsequent orders or certificates made by the Interstate Commerce Commission were "proper and sufficient certificates" as required by the State Commission's order.

Now in order to say that the State Commission's order became effective (assuming that it could become effective on issuance of certificates by the Interstate Commerce Commission) it must first be found that *valid* certificates have been issued by the latter Commission. We do not find in the papers and files before

the court anything on which to base a determination that the certificates (so-called) copies of which are in the record, are valid. It does appear, as already shown, that they were issued not on carriers' motion or application but over their protest and objection. Furthermore, paragraph 19 of section 1 of the Interstate Commerce Act as amended in 1920 requires that upon receipt of any application for any such certificate

> "the Commission shall cause notice thereof to be given to and a copy filed with the governor of each state in which such additional or extended line of railroad is proposed to be constructed or operated, or all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned, with the right to be heard as hereinafter provided with respect to the hearing of complaints or the issuance of securities; and said notice shall also be published for three consecutive weeks in some newspaper of general circulation in each county in or through which said line of railroad is constructed or operates."

No notice was given to the governor of California. No notice was published. This failure to comply with the law does not appear, however, in the record before the court. On or after the day we filed our petitions for writs in these proceedings the respondent advised us that the Commission had caused copies of the certificates to be added to its files in the Union Station proceedings. This had been done without notice to us and without our knowledge, without calling a hear-

ing or giving us an opportunity to object. We are not complaining of that action; we do not perceive that it has deprived us of any rights.

Because the Interstate Commission made no affirmative order against us we had no appeal or ground for injunction (see our Reply Brief, p. 72). Therefore we may attack the validity of the certificates whenever and wherever they are presented as a ground of action. It is only fair to add that we are advised at the Commission's office in Washington that notices under paragraph 19 are only required when application under paragraph 18 is made by the carrier. On what theory this construction of the law is based, we do not know.

Amici curiae in their brief dated December 30, 1929, at pages 41 and 42, say that objection to these certificates was not made in the petition of the carriers for rehearing before the Railroad Commission, and hence cannot be availed of by them before this tribunal.

We replied to this as follows, in our answer to their brief dated January 27, 1930, at page 42:

> "It is suggested that we did not raise this point of invalidity in our petition for rehearing filed with the State Commission. How could we? That petition had to be filed under the law within 30 days after the decision was made. The decision is dated July 8, 1927 (see page 221 of Vol. II of Respondents' Brief). Our petition for rehearing had to be filed not later than August 7, 1927, and

was in fact filed on or about July 27, 1927, but the certificates in question were not issued until May 8, 1928. (See Appendix 4, to Brief of *amici curiae.*)"

While we have suggested these facts chiefly in connection with our proposition that the order of the State Commission was indefinite, conditional and uncertain, yet we are not adverse to having it decided in these proceedings, if it can be done, whether or not the order of the Railroad Commission has become effective, but we insist as earnestly as we can that we be not represented as conceding or not questioning the validity of those certificates. We have questioned them at every opportunity.

We therefore ask the court to give consideration to the question whether the validity or invalidity of the certificates issued by the Interstate Commerce Commission can be adjudicated in these proceedings. We ask the court to eliminate from its opinion anything suggesting that the carriers acquiesce or have ever acquiesced in the validity or sufficiency of those certificates or any of them, and we beg especially that it be made clear beyond cavil whether or not the validity of those certificates and the present effectiveness of the order under review are adjudicated in these proceedings.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation, *Appellant*,
vs.
RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, *et al.*, *Appellees*. } No. 470

LOS ANGELES & SALT LAKE RAILROAD COMPANY, a corporation, *Appellant*,
vs.
RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, *et al.*, *Appellees*. } No. 471

SOUTHERN PACIFIC COMPANY, a corporation, and SOUTHERN PACIFIC RAILROAD COMPANY, a corporation, *Appellants*,
vs.
RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, *et al.*, *Appellees*. } No. 472

APPELLANTS' REPLY TO BRIEF OF AMICI CURIAE.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1930.

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation, *Appellant*, *vs.* RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, *et al.*, *Appellees.*	No. 740
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APPELLANTS' REPLY TO BRIEF OF AMICI CURIAE.

THE RAILROADS REST THEIR CASE UPON QUESTIONS OF LAW.

The argument of Amici Curiae (p. 76 of their brief) that "In view of the failure of the appellant

carriers to cite evidence in the Record in support of their claims, we believe that we are justified in insisting (what is the fact) that on controverted issues of fact the Record is in each instance against the contentions of the carriers'' is not well founded.

With the object of simplifying the questions of law presented for determination no specifications of error relating to the insufficiency of the evidence to sustain the State Commission's findings and order have been made. No effort has been made or will be made to argue controverted questions of fact. It has been deemed unnecessary to do more than direct the Court's attention to the important facts upon which the State Commission's decision and order are predicated, which are contained in the testimony of witnesses appearing for the State Commission and as set forth in the Commission's findings, conclusions and orders and stated in the opinions of the State Court and this Court.

I.

THE STATE COMMISSION'S ORDER IS IN CONTRAVENTION OF AND REPUGNANT TO THE COMMERCE CLAUSE AND INCONSISTENT AND IN CONFLICT WITH THE POWERS VESTED IN THE INTERSTATE COMMERCE COMMISSION.

In answer to the argument on behalf of the Railroads relating to this question (Appellants' Brief pp. 27-61) counsel for Amici Curiae contend that Congress did not intend to deprive and did not deprive the states of jurisdiction to require the construction and operation of a union passenger station and necessary incidents at new sites (B. pp. 43, *et seq.*).

Reliance is placed upon the rule announced by this Court in *Savage v. Jones,* 225 U. S. 501, 533 and similar cases cited by counsel for Amici Curiae at pages 43-46 of their brief.

In *Savage v. Jones, supra,* it was held that a state law enacted under its reserved power, regulating the sale and requiring the publication of the ingredients of concentrated commercial stock food is not inconsistent with or repugnant to the Federal Food and Drugs Act, the object of which is to prevent adulteration and misbranding and to keep adulterated and misbranded articles out of interstate commerce.

In *M. K. & T. v. Harris,* 234 U. S. 412, it was held that a Texas statute allowing a reasonable attorney's fee as a part of the cost in case of recoverable contested claims for loss on interstate shipments, was a police regulation designed to promote the prompt payment of small but well-founded claims and to discourage unnecessary litigation with respect to them.

In *Sligh v. Kirkwood,* 237 U. S. 52, it was held that a Florida statute making it unlawful to sell or ship any citrus fruits which are immature or otherwise unfit for consumption is not invalid even when applied to shipments in interstate commerce.

The arguments of opposing counsel have been anticipated in the Joint Brief of Appellants (pp. 42-54) and need not be repeated.

The cases at bar are clearly distinguishable from the case of *Savage v. Jones* and cases sustaining the rule therein announced. In these cases the State of California is attempting to compel interstate railroads to provide instrumentalities or facilities of Interstate commerce. It is endeavoring to regu-

late in a field, the control over which has been delegated to Congress. When a state attempts to act in a field which has been committed to Congress, a different rule from that followed in *Savage v. Jones* is applicable. When Congress manifests an intention to occupy that field, state regulation is rendered inoperative, regardless of whether the state law is in conflict with the Federal law or not. Under these circumstances, the rule followed in

Charleston & Western Carolina Ry. Co. v. Varnville Furniture Co., 237 U. S. 597, 604,
New York Central R. Co. v. Winfield, 244 U. S. 147, 153,
Penn. R. Co. v. Public Service Com., 250 U. S. 566, 569,
Mo. Pac. R. Co. v. Stroud, 267 U. S. 404, 408,
Mo. Pacific R. Co. v. Porter, 273 U. S. 341, 345.
C. W. R. R. & N. Co. v. Washington, 270 U. S. 87.
St. L. I. M. & S. Ry. Co. v. Hesterly, 228 U. S. 702.

is applicable. Under these decisions a state cannot add to the regulation by Congress when Congress has indicated its intention of occupying the field. Whatever regulation Congress may prescribe it impliedly excludes any other regulation.

International Shoe Co. v. Pinkus, 278 U. S. 261, cited in the brief of Amici Curiae on page 46, follows this rule.

The Intention of Congress as to Union Passenger Stations.

Counsel endeavor to fortify their argument by referring to the proceedings before Congress at the time the Transportation Act was under consideration.

At page 48 of their brief a statement of Chairman Esch is quoted presumably for the purpose of indicating that Congress did not intend to confer power upon the Interstate Commerce Commission to require the construction of a union passenger station at a new site, involving an extension of main line tracks or any of the essential incidents of such station. Nothing contained in the quotation indicates that it was the intention of Congress to permit the states to exercise the power of requiring the construction of such interstate union stations. The proposed amendment discussed by Chairman Esch dealt with the joint use of depots and did not relate to the construction of union stations at new sites involving an extension of lines to reach them. Mr. Esch coauthor of the bill stated:

> "There is, however, a provision in this bill providing for the joint use of terminals * * * But that power will be exercised, I have no doubt, mainly in connection with the terminals in the large cities and in the congested centers. Due to the prohibitive cost of land, it is necessary to get a greater use out of *existing terminals* by giving to some regulatory authority, like the Interstate Commerce Commission, the right to order the joint use of such terminals, but that that power should be exercised as to depots in small communities is not contemplated. * * *" (Italics ours.)

The quotation is from Appellees Brief, p. 30. The census of 1930 shows that Los Angeles is the fifth city of the United States in population.

This Court in the *First Los Angeles Case* has construed the Transportation Act in accordance with the statement made by Mr. Esch. In that case it

held that Congress had conferred upon the Federal Commission jurisdiction over a union station at a new site where such union station involves an extension of lines and a rearrangement of tracks; but that the State may still direct the construction of merely local union stations at railroad crossings or connections. In its decision in the *First Los Angeles Case,* this Court was not unmindful of paragraph (17) of Section 1. It referred to that paragraph and said that "only a lawful order of the Interstate Commerce Commission would raise a question of the power of a State Commission in such cases." In other words, the States still have power to order railroads to establish local union stations at railroad crossings or connections, provided the order of the State Commission is not inconsistent with any lawful order of the Interstate Commerce Commission.

The decision of the Supreme Court of North Carolina in *North Carolina Corporation Com. v. Southern Ry. Co.,* 185 N. C. 435, 459, cited by counsel at page 50 of their brief, is in accordance with the decision of this Court in the *First Los Angeles Case.* The cited case merely concerned the validity of an order requiring two intersecting railroads to maintain a union station at the junction point.

At page 53 of the City's brief it is stated that if the argument of the carriers that Congress has so occupied the field of regulation of union passenger stations upon a new site as to preclude further action by the States is sound, "the result will be that no public authority either State or Federal, any longer has the authority, heretofore clearly possessed by the states, of requiring the construction of union passenger station on new sites, however urgently the

public convenience and necessity may require such construction." This is referred to as a "startling proposition." Even if this result will follow it is no reason why the Court should disregard established legal principles to prevent such a result. This is an argument that should be addressed to Congress rather than to the Court.

CONGRESS DID NOT INTEND TO CIRCUMSCRIBE THE POWER OF ITS COMMISSION AND REQUIRE IT TO SHARE ITS AUTHORITY WITH A STATE COMMISSION.

Counsel argue (B. p. 59):

> "The authority of the Interstate Commerce Commission is purely *factual* and *permissive*. It *finds* and *certifies* to important facts in connection with the proposed union station construction. The function of the California Railroad Commission, on the other hand, is *mandatory* in character. The Commission *requires* that the union passenger station be constructed." (Italics theirs.)

This argument has been anticipated at pages 54-61 of Joint Brief for Appellants, and the case of *Missouri Pacific R. Co. v. Stroud*, 267 U. S. 404, 408 therein cited, sustains the contention of the Railroads that there cannot be a divided authority between the nation and the states relating to the regulation of interstate commerce.

It is true that, as contended by counsel "the authority of the Interstate Commerce Commission is purely factual and permissive. It finds and certifies to important facts in connection with the proposed union station construction."

This is all the power Congress deemed necessary to confide to its Commission. By vesting the Commission with such authority Congress occupied the field and thereby superseded the state law.

In *Second Los Angeles Case, supra,* p. 70, this Court held:

> "When the interest of a great city in its improvements is to be prompted entirely at the expense of railroads that enter it, Congress would be expected to hesitate before it would change discretionary leave for the erection of such stations into positive command."

But according to counsel Congress has provided so that its Commission may evade the direct responsibility for such expenditures by giving discretionary leave over protest of the railroads and thereupon a state commission although charged with no responsibility to Congress or to the nation, may at once convert that discretionary leave into a command.

In this connection counsel argue (B. p. 59) that the Interstate Commerce Commission on the one hand and the California Railroad Commission on the other are performing distinct and separate functions and that "there is nothing unlawful or even unusual in the performance by these two governmental agencies of these distinct and separate functions." It is stated that this is one of the many instances in which two public authorities acting lawfully each within its own jurisdiction must take favorable action before a certain result will be effected.

Where railroads apply to the Interstate Commerce Commission for a certificate of public convenience and necessity authorizing them to construct or extend a main line of railroad no reference is made to the

requirements of local state or municipal laws permitting the construction of the proposed line over, across or upon highways or streets and the necessary authority to cross streets and highways is granted in an entirely separate proceeding with which the Interstate Commerce Commission has no concern. This does not mean that the regulation of the railroad is divided between the United States and the state or city.

The case of *Cummings v. Harper*, 188 U. S. 410, cited at page 61 of Brief of Amici Curiae does not sustain the contention that Congress contemplated that the Federal and State Commissions might exercise concurrent jurisdiction in establishing new interstate union stations at new sites. In that case citizens of Illinois brought suit against the City of Chicago for the purpose of restraining it from interfering with the construction of a dock in front of certain lands owned by the plaintiffs. The dock was being constructed without the consent of the City. The River and Harbor Act of March 3, 1899, (30 Statutes at Large, 1151, Chapter 425, Sec. 9), which provides for the construction of structures over or in navigable waters of the United States, contains the proviso "that such structures may be built under authority of the Legislature of a State across rivers and other waterways, the navigable portions of which lie wholly within the limits of a single State, provided the location and the plans thereof are submitted to and approved by the Chief of Engineers and by the Secretary of War before construction is commenced." The Court merely held, in accordance with the provisions of the Act, that the construction of the dock in ques-

tion depends "upon the concurrent or joint assent of both the National Government and the state government."

The cited case suggests that if Congress had intended that the construction of union stations for interstate carriers, involving extensive extensions of line, should depend upon the concurrent action of the State and Federal authorities, it would have used words to indicate that intention just as in the River and Harbor Act of March 3, 1899, it clearly indicated that the erection of a structure in a navigable river within the limits of a State should depend upon the concurrent or joint assent of both the National Government and the state government.

The cases of *Montgomery v. Portland,* 190 U. S. 106; *State of Wisconsin v. State of Illinois,* 278 U. S. 367, 412 cited by Counsel are equally inapplicable.

The general statements contained at pages 61, 62 of Brief of Amici Curiae do not answer the arguments found at pages 54-61 of Appellants' Brief, that the order of the State Commission cannot be supported or rendered valid by certificates issued by the Interstate Commerce Commission, that there cannot be a divided authority between the Federal and State Commissions, that neither the Federal nor State Commissions have been vested with power to give effect to orders entered by the other. Counsel's statement that "the authority of the Interstate Commerce Commission is purely *factual* and *permissive,*" sustains our position.

II.

THE CERTIFICATE ISSUED BY THE INTERSTATE COMMERCE COMMISSION IS VOID.

Counsel for Amici Curiae, at pages 64 *et seq.* of their brief, advance two principal arguments in support of their contention that the certificate issued by the Interstate Commerce Commission is valid.

One is that if the Interstate Commerce Commission has jurisdiction to issue such certificates only upon application of the carriers it follows "that in union passenger station cases before state commissions the carriers can always defeat the public authorities by the simple device of failing to make application to the Interstate Commerce Commission for the necessary certificates." This argument is not sound. The stated result would follow, but unauthorized certificates should not be validated because of such result. The authority of the Commission to issue certificates is to be found only in the Act of Congress. If Congress has not vested the Interstate Commerce Commission with such power it is not the function of this Court to confer authority upon the Commission to issue such certificates in adversary proceedings or to hold unauthorized certificates valid because of the results which might follow from the failure of Congress to vest the Commission with such authority.

The second argument is that this Court in the *First Los Angeles Station Case,* with knowledge that the City of Los Angeles was before the Interstate Commerce Commission in an adversary proceeding, "pointed out with much care and detail the authority of the Interstate Commerce Commission to issue the certificates." It is argued from this that "this

Court would not have taken the pains to make its careful review if, in fact, the Interstate Commerce Commission has no such power in an adversary proceeding." The answer to this argument is that the question of the power of the Interstate Commerce Commission to issue certificates of public convenience and necessity in adversary proceedings was not before this Court for adjudication in the *First Los Angeles Station Case,* and this Court did not attempt to pass upon that question in that case. In the *Second Los Angeles Case,* this Court, in referring to the *First Los Angeles Case,* said (p. 71):

> "It is quite true that we made references in the opinion to a case foreshadowed in the hypothetical certificates of the Commission in the building of a union station. Such references had, however, not the slightest significance in respect to who could or should build the station, or whence its cost should be defrayed. It was as far as possible from the purpose of the Court in its opinion to indicate its views of the powers which the Commission could exercise adversely to the carriers in compulsory proceedings. They were not before the Court for adjudication."

The argument advanced by Counsel that "the California Railroad Commission considered the certificates to be valid and upon the filing of the same" (which we may state parenthetically was without prior notice to the Railroads) (R. p. 4) "denied the petitions of the carriers for rehearing," and that the State Court held that "the certificates on their face are proper and sufficient and comply with the decision of the Supreme Court of the United States; the Railroad Commission is so considering them, as

did the Interstate Commerce Commission," can not prevail in view of the authorities cited in support of the Railroad's argument found at pages 63 to 69 of their initial brief.

In several instances counsel make the statement that the Interstate Commerce Commission has issued "the certificates *specified by this Court* in the *First Los Angeles Union Station Case.*" (B. pp. 54, 63, 67, 69.) It is also stated that "the Interstate Commerce Commission complied completely with the *requirements* as to *findings* and *certificates* theretofore *specified by this Court*" (B. p. 63), and that the Interstate Commerce Commission "in the matter of findings and certificates, acted in exact accord with the decision of this Court in the *First Los Angeles Union Station Case.*" (B. p. 67) (Italics ours)

The certificate issued by the Interstate Commerce Commission which is described by counsel as those "specified by this Court" will be found at pages 153 and 154 of the Record. The certificate is also contained in appendix 3 of Brief of Amici Curiae and is complete as there set forth with the exception that the "note" is misleading as is shown by the Record because the certificate is followed by two orders, one denying the application of the City and State for an order requiring the construction of a union passenger station and the other dismissing the joint application of Southern Pacific Company and Southern Pacific Railroad Company, Finance Docket 3556.

This Court did not "specify" any certificates. In referring to the certificates which the Commission is authorized to issue under paragraphs (18)-(21), Section 1, the Court stated:

> "Such a certificate is, we think, necessary in the construction of a new interstate union station which involves a substantial and expensive extension of the main tracks or lines of interstate carriers who theretofore have maintained separate terminals." (*First Los Angeles Case, supra,* p. 344)

Again, at page 346 of this decision the Court in referring to the differences between a local union station and the station proposed in this case, stated:

> "They come within paragraphs (18) to (21) of Section 402 and require a certificate of the Interstate Commerce Commission as a condition precedent to the validity of any action by the carriers or of any order by the State Commission."

These are the only two instances in which the Court refers to certificates in *First Los Angeles Case, supra.*

At the time this Court rendered the first decision in the case cited the Interstate Commerce Commission had not passed upon the questions which had been submitted to it in the proceeding brought by the City and State.

The Interstate Commerce Commission had rendered its decisions in the *First Federal Commission Decision* and *Second Federal Commission Decision* at the time the mandamus proceedings reached this Court by certiorari. This Court in referring to *First Los Angeles Case* stated:

> "the relocation of tracks, which was incidental to the proposed union passenger station, required a certificate of approval by the Interstate Commerce Commission * * *" (p. 61)

and held

> "The Commission, in order to facilitate dispatch and in the disposition of the case * * * made hypothetical certificates, * * *"

which the Court "summarized". (*Second Los Angeles Case, supra,* p. 62)

Again, at page 71 of its opinion this Court referred to "hypothetical certificates" of the Commission.

These are the only instances in which this Court has referred to the Commission's certificate (except in instances reciting the requirements of Paragraph 18 of Sec. 1 and of Sec. 20). It has done no more than "summarize" the certificate which the Commission issued but has nowhere and at no time "specified" what certificate should be issued or under what circumstances.

THE RAILROADS ARE ENTITLED IN THESE PROCEEDINGS TO QUESTION THE VALIDITY OF THE CERTIFICATE ISSUED BY THE INTERSTATE COMMERCE COMMISSION.

Beginning at page 68 of the brief filed on behalf of the City counsel argue that the validity of the certificate cannot be attacked collaterally. Counsel contend that because the Southern Pacific and the Salt Lake Companies applied for certificates of public convenience and necessity relating to the construction of new lines and the abandonment of existing lines necessary to carry into effect *their* plan for the joint use of Southern Pacific's station, the Commission is vested with power to determine the questions presented by the applications filed by the State Commis-

sion and the City for certificates requiring and authorizing the Railroads to extend and abandon lines necessarily involved in the construction and operation of the union station ordered by the Commission. The argument is made that "under the circumstances, it would seem to be elemental that the decision of the Interstate Commerce Commission can not be attacked collaterally." (Amici Curiae Brief p. 69)

The applications covering the plan of the Railroads have no relation to the applications made by the State Commission and the City. The fact that the Railroads' applications were consolidated for hearing with the complaint that had been filed by the City does not operate to vest the Commission with authority to issue certificates upon applications filed by the City and State which relate to an entirely separate enterprise. (*Second Los Angeles Case, supra*, p. 62)

The certificates applied for by the Southern Pacific and Salt Lake Companies were denied July 6, 1925, as shown by City of Los Angeles Exhibit No. 5 certified to this Court. (R. p. 7, Item 54-b)

The application of Southern Pacific Company and Southern Pacific Railroad Company, Finance Docket No. 3556, sought authority to abandon main line passenger and freight service on Alameda Street. This application was withdrawn and abandoned before the Interstate Commerce Commission rendered its decision in *Second Federal Commission Decision* and was dismissed by the Commission's order. (R. pp. 144, 7)

The Railroads Were not Entitled to Maintain an Action in the District Court.

The argument proceeds upon the theory that "the carriers could have filed in the appropriate

District Court of the United States a bill for an order to set aside the Commission's certificates" and authorities are cited in support of the contention that where the action of the Interstate Commerce Commission is affirmative in character the carriers could and should have instituted proceedings to enjoin the action taken by the Commission.

Counsel conclude their argument by stating:

> "While we respectfully insist on the point that the carriers can not raise this issue collaterally, as they are seeking to do, we believe that the Court will not find it necessary to pass on the point for the reason that the findings and certificates issued by the Interstate Commerce Commission are lawful and valid." (B. p. 74)

The concession is made inferentially that this Court may pass on this point if the certificates issued by the Commission are not lawful and valid.

The Railroads insist, as was argued in their opening brief, that (1) they were not entitled to maintain an action in the United States District Court either under the jurisdiction vested in the District Courts by the Urgent Deficiencies Act of October 22, 1913, or under such court's general equity jurisdiction; (2) that even though the carriers were entitled to institute such an action they are nevertheless entitled to question the sufficiency of the certificate collaterally because it is void.

The Interstate Commerce Commission held, in *Second Federal Commission Decision, supra,* p. 497:

> "All issues of fact having been considered and concluded by our original report and this report

> on further hearing, nothing remains for us but to deny the application of the city of Los Angeles and the intervener, the Railroad Commission of the State of California, for a final order herein requiring the construction of a station as found in the public interest; but in lieu thereof to issue an appropriate certificate of public convenience and necessity conformable to the findings herein;"

In conformity with this conclusion the Commission issued its certificate, but *no order was entered requiring* the Railroads to take any action with respect thereto.

The certificate issued is affirmative only in the sense that it is permissive, but, as stated, does not require the Railroads to take any action.

The orders denying the applications of the City and State to "require the construction of a union passenger station and terminal" and denying Southern Pacific Company's application which was withdrawn and dismissed are negative. *Second Federal Commission Decision* (R. p. 154).

The certificate issued by the Commission does not attempt to adjudicate rights sought to be exercised by the Railroads nor does it enjoin the Railroads to do or refrain from doing anything whatsoever.

This case is distinguishable from the *Chicago Junction Case,* 264 U. S. 258, cited by counsel for Amici Curiae (p. 71 of their brief) and from the *Colorado Case,* 271 U. S. 253, upon which counsel also rely. In the *Chicago Junction Case* this Court stated (p. 262).

> "The order (that is of the Commission) did not provide for the issue of a certificate of public convenience and necessity. * * * In this Court counsel for all the defendants stated that the order was entered solely under paragraph 2 of Section 5. We have, therefore, no occasion to consider the incidents of applications under paragraph 18 of Section 1, or rights thereunder."

A vital distinction must be made between the *Colorado Case* and the case at bar, for the reason that in the *Colorado Case* the certificate was issued upon application of the interested carrier which sought to abandon a portion of its railroad in the state and upon the issuance of the certificate the carrier was entitled and intended to proceed to dismantle its line of railroad. The certificate in the *Colorado Case* was valid upon its face, having been issued upon application of the carrier pursuant to the provisions of paragraphs (18)-(20) of Section 1, whereas in the case at bar the certificate was issued in adversary proceedings over the objections and against the protests of the carriers which throughout the proceedings contended that the Interstate Commerce Commission did not possess the constitutional or statutory power to issue the certificate in accordance with the prayer of the complaint.

In all of the cases cited by counsel an attempt was made to enjoin action which the Railroads proposed to take under certificates of public convenience and necessity for which the Railroads had applied and the attack in each instance was made by some party other than the railroad to whom the certificates were issued. In none of the cases cited were certificates issued in adversary proceedings. In fact, this is the

only instance we can find where the Interstate Commerce Commission has undertaken to issue a certificate in such proceedings.

How could the Railroads bring an action to enjoin the issuance of the certificate? What allegations could be specified in a complaint to support an injunction? The Railroads were not injured by the mere issuance of a certificate *permitting* them to do certain things. The certificate did not command them to take any action. It did not deny them any right. It did not subject them to any liability, civil or criminal for failure to avail themselves of the permission to extend or abandon lines.

The rights of the Railroads were not affected by the issuance of the certificate and could not be affected until an effort was made to compel the Railroads to do the things which the certificate purports to permit them to do. Had the Railroads undertaken to enjoin the issuance of the certificate they would have been confronted with an argument founded upon well recognized principles that the Interstate Commerce Commission had not required them to do the things specified in the certificate and had made no threat to compel the Railroads to perform the things which the Interstate Commerce Commission held they might lawfully do and that they, therefore, could not legally complain of any threatened act affecting their property or their rights.

Counsel argue (B. p. 59):

> "The authority of the Interstate Commerce Commission is purely *factual* and *permissive*. It *finds* and *certifies* to important facts in connection with the proposed union station construction. * * *" (Italics theirs)

Counsel for Appellees (B. p. 28) characterize the Federal Commission's power as

> "the limited 'supervisory' jurisdiction of the Interstate Commerce Commission which it possesses over the matter of the construction of union stations * * *"

If the power of the Interstate Commerce Commission is thus limited and circumscribed it is as stated by this Court in *United States v. Los Angeles & Salt Lake Railroad Company*, 273 U. S. 299, 310, "the exercise solely of the function of investigation" and the cases at bar are as stated in Appellants' joint Brief controlled in this particular by the case cited.

Counsel argue (B. p. 59):

> "The function of the California Railroad Commission, on the other hand, is *mandatory* in character. The Commission *requires* that the union passenger station be constructed." (Italics theirs)

It was not until the State Commission filed in its archives a certified copy of the certificate and undertook to make its order effective by denying appellants' applications for rehearing, thereby converting the Interstate Commerce Commission's permission into a command, that the carriers' rights were adversely affected. These rights the carriers sought to protect and enforce by the proceeding instituted in the State Court now under review.

In support of the argument that the Railroads have a right to test the Interstate Commerce Commission's decision by a proceeding in the United States District Court, counsel, at page 74 of their brief,

quote from the decision of the State Supreme Court, "We think this question is not properly raised here." This isolated sentence is misleading and when read alone may create the impression that the State Court was referring to questions relating to the validity or invalidity of the certificate. The two sentences preceding the sentence above quoted read:

> "It is contended that because the order recites that it shall become effective upon the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates or orders covering and authorizing the constructions, extensions and abandonments authorized in said order of the Railroad Commission and that the issuance of such order or orders by the Interstate Commerce Commission shall be a condition precedent to the effectiveness of the order of the Railroad Commission, the order is void for uncertainty. Petitioners ask who is to say whether or not such certificates as might be made by the Interstate Commerce Commission are proper and sufficient certificates. *We think this question is not properly raised here.*"

The question answered was not that of the power of the Interstate Commerce Commission to issue certificates, but the question whether the certificate which it had issued was such as the State Commission had in mind in making its order.

The Commission's Certificate May Be Attacked Collaterally.

Assuming, solely for the purpose of argument, that the Railroads were entitled to seek injunctive relief in the United States District Court correcting the In-

terstate Commerce Commission's action, it does not follow that the Railroads are not entitled to question the validity of the certificate in this proceeding. If we are correct in our contention that Congress has vested its Commission with the power to issue certificates such as are involved in this case only upon the application of the carriers, it may be collaterally attacked because it is void.

Where the Commission makes an order which it has no power to make, the order is necessarily void and not merely voidable.

Illinois Central R. Co. v. Pub. Utilities Com., 245 U. S. 493, 506.

A judgment rendered in excess of jurisdiction is void, not merely voidable and is subject to collateral attack.

Re Terry, 128 U. S. 289, 305.

Although a Court may have jurisdiction over the parties and the subject matter, yet if it makes a decree which is not within the powers granted it by the law of its organization, its decree is void and subject to collateral attack.

United States v. Walker, 109 U. S. 258, 266.

In *United States v. Ward* (C. C. A. 8th Circuit), 257 Fed. 372, 376, it was held that the allowance of compensation in bankruptcy proceedings by the District Court "other or different, or in addition to, that provided by the bankruptcy law for services,

clearly imposed upon a referee by law, is beyond its jurisdiction and void, and its judgment may be attacked collaterally.

See also *Ritchie v. Sayers*, 100 Fed. 520, 530.

The Interstate Commerce Commission having been vested with no power to issue certificates of public convenience and necessity in the adversary proceedings which it entertained, the certificate issued is void and not merely voidable, is without any effect, and the Railroads are entitled to raise this question at any time and in any proceeding regardless of whether or not that they might question the validity of the certificate by invoking the jurisdiction of the United States District Courts. None of the authorities cited by counsel in their brief are to the contrary.

III.

The State Commission's Order Requires the Joint Use of the Terminal Main Line Tracks Which Are Now Separately Owned, and the State Commission Has Failed to Provide Compensation For Their Use by Other Carriers.

Counsel in the argument found at pages 107 *et seq.* of their brief impliedly admit that no compensation has been provided for the joint use of property owned by the carriers individually and seek to evade the issue by contending that the Commission's order does not "require the joint use by one or more carriers of existing tracks and property of the other carriers."

The Railroads believe that the references to the record found at page 94 of their initial brief conclu-

sively establish the fact that the Commission's order required such joint use of the existing tracks and property owned by one another, but as counsel has argued that the State Commission's order does not require any joint use of existing carrier property it becomes necessary to refer to the testimony introduced by the State Commission's witnesses and to the Commission's conclusions, findings, and order. Counsel endeavor to support their argument by calling attention to the fact that "the directory and mandatory portions of the Railroad Commission's order" do not specifically require the joint use of any existing property. Counsel admit, however, that

> "It is true that among the *findings* of the Railroad Commission is one (6) on the subject of such joint use of existing carrier properties 'as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station * * *'" (R. 132.)

The order of the State Commission (R. 131) consists of certain findings of fact and the mandatory provisions requiring certain things to be done. To determine what the Commission's order requires the carriers to do, the mandatory provisions of the order must be construed in connection with the findings of fact *contained in the order.* The first mandatory provision (R. 133) requires the Railroads to construct a union passenger station in the City of Los Angeles within a defined area, together with such tracks, connections, and all other terminal facilities and additions, extensions, etc., as may be reasonably necessary and incidental to the use of union passenger station "in substantial compliance with the plan outlined in Commission's Exhibit 4-b herein."

Finding No. 6 included in the order (R. 132) is "that the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the City of Los Angeles, as may be incidental, necessary or convenient, to the proper operation of any such union passenger stations as defendants or any of them, in accordance with our order herein, may construct and establish in that portion of said City described in paragraph (3) above, is in the public interest, and is practicable, without, in our opinion, impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business."

This finding undoubtedly contemplates that the railroads must necessarily use the tracks of each other to reach the proposed union station.

In the "hypothetical certificates" set forth by the Interstate Commerce Commission in *First Federal Commission Decision*, 100 I. C. C. 421, 459, 460, the Commission found it necessary, in order to fully conform to the *First State Commission Decision*, to include finding No. 6, which it substantially identical with finding number 6 of the State Commission above quoted.

The certificate issued by the Interstate Commerce Commission in *Second Federal Commission Decision*, 142 I. C. C. 489 (R. pp. 153-4) recites:

> "That the present and future public convenience and necessity * * * require the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the city of Los Angeles, Calif., as may be incidental, and neces-

> sary or convenient, to the proper operation of such union passenger station and terminal." (R. pp. 153-54.)

This Court in summarizing these "hypothetical certificates" (*Second Los Angeles Case, supra,* p. 63) stated:

> "The report further found that such joint use of track or other terminal facilities as may be incidental and necessary to the proper operation of any such union station is in the public interest and is practicable, without substantially impairing the owning carriers' ability to handle their own business."

It thus appears that the Interstate Commerce Commission considered that the "essential incidents" of the construction and operation of a union station ordered by the State Commission involves the joint use by the several Railroads of one owner's tracks and terminal facilities.

The Commission's decisions, orders and exhibits likewise make it certain that the joint use by the Railroads of one another's facilities is necessarily involved in carrying the order into effect.

Since the union station and other facilities must be constructed "in substantial compliance with the plan outlined in Commission's Exhibit 4-b herein," and since under the Commission's plan, as outlined in Exhibit 4-b, it will be necessary for the carriers to use each others' tracks, the Commission's order definitely requires the Railroads to make use of each others' tracks.

It likewise appears from the Railroad Commission's Exhibit No. 6 (R. p. 227) that the Commis-

sion's order requires the construction of connections between main lines of interstate carriers and the joint use of main lines of such carriers. Counsel contend that this exhibit is not a part of the order and that the station must be constructed only in substantial compliance with the Commission's Exhibit 4-b (R. p. 267).

Commission's Exhibit No. 6 is a "Key Map of Plaza Plan" and shows in greater detail what is required by the Commission's Exhibit 4-b.

This is confirmed by Commission's Exhibit 13 (R. p. 231) which is an estimate of expenditures and new money required for the "Plaza Plan." "AD" on Exhibit 6 shows connections between the Southern Pacific, Salt Lake and Santa Fe lines in order to permit the joint use of tracks to reach the union station, "MCF2." Item 3 of Commission's Exhibit 13, "New Trackage and Connections" shows "SP-SL-SF connections at East and West banks of the River at Hobart.

Counsel seek to avoid this issue by arguing, at pages 108-110 of their brief, that the Commission's order affords the carriers the alternative of jointly using one another's terminal tracks or constructing their own main tracks to reach the designated sites and in support thereof cite the statement by this Court in *First Los Angeles Station Case, supra,* 340.

The Interstate Commerce Commission accepted the estimate of the State Commission that the cost of the union station complete, including all trackage, would approximate $10,000,000.00. This was based upon the theory that the carriers would make joint use of their trackage to reach the union station in accordance with the estimates made by the Commission's

engineers of such construction. No estimate of cost of building independent lines into the station was made by the State Commission or by the Interstate Commerce Commission.

The authorities cited in Appellants' Opening Brief considered in the light of these facts sustain their contention that their constitutional rights have been impaired by failure of the State Commission to provide compensation for the use of their railroad properties by one another.

IV(a) (b).

The argument advanced by counsel for the City (pp. 110-123 of their brief) in an effort to show that in ordering the construction of a union station the State Commission was not acting under the guise of exercising its power of eliminating grade crossings, that the order did not require Southern Pacific Company to join in constructing a union station for the purpose of eliminating grade crossings and providing the other two railroads with adequate passenger depots, and the Santa Fe and Salt Lake lines are not required to join in the construction of the union station for the purpose of eliminating crossings on lines of the Southern Pacific Company, has been anticipated and answered, pages 103-117 of Joint Brief for Appellants, and requires no further comment.

CONCLUSION.

This Court may take judicial notice of the fact that earnings of the railroads have been constantly decreasing and that motor vehicles publicly and privately owned have diverted a large volume of the

passenger traffic from the railroads. If the expenses of conducting the passenger business are increased by the erection of expensive terminals a burden will be placed upon interstate commerce both freight and passenger and the railroads will be handicapped in carrying into effect the mandate of Congress to operate their properties efficiently and economically in order to provide the people of the United States with an adequate transportation system.

Congress in its wisdom provided that existing terminal facilities should be utilized by the carriers jointly and purposely vested its Commission with adequate power to accomplish the unification of terminals with the deliberate intention of divesting state commissions of the power to require carriers to make unnecessary expenditures for such purposes.

It is respectfully submitted that the judgment of the State Court should be reversed and that Court directed to annul the State Commission's order.

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Dated April 22, 1931.

In the Supreme Court

OF THE

United States

APR 15 193
CHARLES ELMORE CRO
CLER

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THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (a corporation),

Appellant,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and LEON O. WHITSELL, C. L. SEAVEY, EZRA W. DECOTO, THOMAS S. LOUTTIT and W. J. CARR, as members of and constituting said Railroad Commission,

Appellees.

No. 470

LOS ANGELES & SALT LAKE RAILROAD COMPANY (a corporation),

Appellant,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and LEON O. WHITSELL, C. L. SEAVEY, EZRA W. DECOTO, THOMAS S. LOUTTIT and W. J. CARR, as members of and constituting said Railroad Commission,

Appellees.

No. 471

SOUTHERN PACIFIC COMPANY (a corporation), and SOUTHERN PACIFIC RAILROAD COMPANY (a corporation),

Appellants,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and LEON O. WHITSELL, C. L. SEAVEY, EZRA W. DECOTO, THOMAS S. LOUTTIT and W. J. CARR, as members of and constituting said Railroad Commission,

Appellees.

No. 472

BRIEF FOR APPELLEES.

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In the Supreme Court
OF THE
United States

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY (a corporation),

Appellant,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and LEON O. WHITSELL, C. L. SEAVEY, EZRA W. DECOTO, THOMAS S. LOUTTIT and W. J. CARR, as members of and constituting said Railroad Commission,

Appellees.

No. 470

LOS ANGELES & SALT LAKE RAILROAD COMPANY (a corporation),

Appellant,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and LEON O. WHITSELL, C. L. SEAVEY, EZRA W. DECOTO, THOMAS S. LOUTTIT and W. J. CARR, as members of and constituting said Railroad Commission,

Appellees.

No. 471

SOUTHERN PACIFIC COMPANY (a corporation), and SOUTHERN PACIFIC RAILROAD COMPANY (a corporation),

Appellants,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, and LEON O. WHITSELL, C. L. SEAVEY, EZRA W. DECOTO, THOMAS S. LOUTTIT and W. J. CARR, as members of and constituting said Railroad Commission,

Appellees.

No. 472

BRIEF FOR APPELLEES.

Appellants will be referred to as the "Railroads" and appellees will be referred to as the "State Commission."

Throughout this brief the various opinions involved in this controversy will be referred to by the short titles adopted by appellants in their brief.[1]

OPINIONS.

The opinion of the Supreme Court of the State of of California is reported in *A. T. & S. F. Ry. Co., et al. v. California Railroad Commission, et al.* (1930), 209 Cal. 460, hereinafter referred to as *Second State Court Case,* and included in the Record at pages 184-199.

The opinion and order of the State Commission, directly involved herein are reported in *Municipal League, et al. v. Southern Pacific Co., et al.* (1927), 30 Opinions of the R. R. Com. of Cal. 151, hereinafter referred to as the *Third State Commission Decision,* and will be found at pages 119-134 of the Record.

Other Opinions Rendered By Commissions and Courts Relating to this Controversy.

The first opinion and order of the State Commission are reported in *Municipal League, et al. v. Southern Pacific Company, et al.* (1921), 19 Opinions of the R. R. Com. of Cal. 740, hereinafter referred to as the *First State Commission Decision.* (R. pp. 24-84.)

The opinion and order of the State Commission on rehearing are reported in *Municipal League, et al. v.*

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1. Unless otherwise indicated all emphasis in quotations from decisions of the Courts is supplied by us.

Southern Pacific Co., et al. (1921), 20 Opinions of the R. R. Com. of Cal. 937, hereinafter referred to as the *Second State Commission Decision.* (R. pp. 84-96.)

The first opinion and order of the Interstate Commerce Commission are reported in *Los Angeles Passenger Terminal Cases* (1925), 100 I. C. C. 421, hereinafter referred to as *First Federal Commission Decision,* and included in the appendix to this brief pp. 29-108; the second opinion and order of the Interstate Commerce Commission are reported in *Los Angeles Passenger Terminal Cases* (1928), 142 I. C. C. 489, hereinafter referred to as the *Second Federal Commission Decision.* (R. pp. 135-156.)

An opinion of the Supreme Court of California is reported in *A. T. & S. F. Ry. Co., et al. v. Railroad Commission* (1922), 190 Cal. 214, hereinafter referred to as the *First State Court Case.* (R. pp. 97-111.)

An opinion of this Court is reported in *Railroad Commission of California v. Southern Pacific Company, et al.* (1924), 264 U. S. 331, hereinafter referred to as the *First Los Angeles Case* and included in the appendix to this brief pp. 16-28; an opinion of this Court is reported in *Interstate Commerce Commission v. United States, ex rel. Los Angeles* (1929), 280 U. S. 52, hereinafter referred to as the *Second Los Angeles Case* and included in the appendix to this brief pp. 109-122.

STATEMENT OF THE CASE.

These appeals are from judgments rendered by the Supreme Court of the State of California in three con-

solidated cases wherein the State Court affirmed an order of the State Commission which requires the Railroads, and each of them, to proceed:

> "to construct and thereafter operate a union passenger station within that portion of the City of Los Angeles bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue and the Los Angeles River, together with such tracks, connections, and all other terminal facilities and additions, extensions, improvements and changes in the existing railroad facilities of said Companies as may be reasonably necessary and incidental to the use of said union passenger station, at a cost of approximately ten million dollars ($10,000,000), in substantial compliance with the plan outlined in Commission's Exhibit 4-b herein.
>
> Work upon the construction of said union passenger station shall commence within ninety (90) days after the effective date of this order, and shall be completed within three (3) years after said date.
>
> Upon and after the construction of said union passenger station the operation by defendant Southern Pacific Company of passenger and freight train service, excepting only industrial freight switching service during hours hereinafter to be described by proper authority, over that portion of its railroad between College Street and East Fifteenth Street, inclusive, in the City of Los Angeles, shall be abandoned and discontinued." (R. pp. 133, 134.)

The order provided that it should

> "become effective from and after the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates or other appropriate order or orders covering and authorizing the construction, extensions and abandon-

ments herein authorized or directed, it being the intent of this Commission that the issuance of such certificates * * * shall be and constitute a condition precedent to the effectiveness of the said Order of this Commission; * * *" (R. p. 134.)

In the said order the State Commission reserved the right

"to make such further order or orders in these proceedings relating to the construction, operation, modification and abandonment of facilities, to costs and division of costs, and to all other matters relating thereto, as may be determined by the Commission to be just and reasonable and as public safety, convenience and necessity may require." (R. p. 134.)

The Commission order is predicated on numerous findings of fact, among them being findings which in substance and effect declare that existing passenger terminal facilities of the Railroads are inadequate and that the present and future public convenience and necessity require the construction and operation of the said union passenger station as ordered. (R. pp. 131-133.)

The proceedings giving rise to the said Commission order were instituted before the State Commission in 1916 by several civic organizations praying for the elimination of certain grade crossings within the City of Los Angeles by the concentration and the joint use of the tracks of the Railroads, for a rearrangement of the passenger stations and freight stations and the establishment of a union passenger station. (R. pp. 9-12, 19-20.) Following numerous hearings the State Commission rendered its decision and order requiring the Railroads

to eliminate specified grade crossings and to construct a union passenger station within a defined area not far removed from the Railroads' existing stations. (*First State Commission Decision, supra.*) (R. pp. 24-80.)

Upon application of the Railroads a rehearing was granted and a second decision and amended order was made by the State Commission again requiring the Railroads to construct a union station and eliminate specified grade crossings. (*Second State Commission Decision, supra.*) (R. pp. 84-96.)

Petitions for writs of certiorari were filed by the Railroads in the Supreme Court of the State of California and the State Court annulled the Commission's said decisions and orders upon the ground that the State Commission had been divested of its power to order the construction of a union passenger station by the enactment of the Transportation Act of 1920. (*First State Commission Case, supra.*) (R. pp. 97-111.) This Court granted writs of certiorari upon application of the State Commission, and thereafter affirmed the judgment of the State Court. (*First Los Angeles Case, supra.*) This Court did not adopt the reasoning of the State Court, however, and did not hold that the State Commission had been divested of its jurisdiction in the premises. To the contrary, this Court pointed out that the Transportation Act of 1920 gave to the Interstate Commerce Commission the "means of control over installation of such new union stations," and that until the Interstate Commerce Commission had acted under Paragraphs 18 to 21 of Section 1 of the Interstate Commerce Act, the Railroads could not be "required to provide a new interstate union station, and to extend their main tracks thereto as ordered

by the State Railroad Commission." *(First Los Angeles Case, supra.)*

Subsequent to the time the State Commission's first two decisions were rendered, and prior to the time this Court decided the case last cited, the City of Los Angeles instituted proceedings before the Interstate Commerce Commission praying for an order requiring the Railroads to construct and operate a union station, to abandon main line passenger and freight service, except local switching on Alameda Street, eliminate grade crossings, construct and acquire new facilities and join in the operation of their several terminal facilities.

The Interstate Commerce Commission thereafter rendered its decision in the *First Federal Commission Decision, supra,* holding that it was not empowered to require the Railroads to construct a union passenger station, but that under the holding of this Court in the *First Los Angeles Case, supra,* it might properly issue certificates under Paragraphs 18 to 21, Section 1 of the Interstate Commerce Act, authorizing the proposed extensions and abandonments as ordered by the California Commission. The Interstate Commerce Commission made specific findings with reference to the issues presented.[1]

---

1. (1) "That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in the City of Los Angeles, Calif.

(2) That neither the present nor future public convenience and necessity require or will require the construction or extension by applicants of new or existing main lines of railroad in the City of Los Angeles, Calif., as described in the application in Finance Docket No. 3569.

(3) That the present and future public convenience and necessity require and will require (a) the extension by defendants

The report was not accompanied by certificates carrying out its findings, and the Commission reserved jurisdiction to alter its findings in the event the plan of the State Commission as finally evolved should be materially

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of their respective main lines of steam railroad in the City of Los Angeles, Calif., so as to reach and properly serve any union passenger station and terminal within that portion of said city bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue, and the Los Angeles River, which they or any of them may construct and establish in accordance with a lawful order of the Railroad Commission of California, and (b) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal.

(4) That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

(5) That, in addition to the abandonment of service on Alameda Street as above authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the City of Los Angeles, California, or of the operation of all or any portion of the present interstate train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of terminal facilities, made necessary or proper in connection with the construction and establishment by defendants, in accordance with a lawful order of the Railroad Commission of California, of a union passenger station and terminal within that portion of said city described in paragraph 3 above.

(6) That the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the City of Los Angeles, Calif., as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station and terminal as defendants or any of them, in accordance with a lawful order of the Railroad Commission of California, may construct and establish in that portion of said city described in paragraph 3 above, is in the public interest and is practicable, without substantially impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business." (*First Federal Commission Decision, supra* (pp. 459-461); Appendix to this Brief, pp. 92-94.)

different from that "as here considered to be in the public interest."

In this regard the Commission's report stated:

> "For orderly procedure it appears preferable that appropriate certificates in connection with the proceedings now before us should be issued subsequent, rather than prior to, the making of an order by state authority, but that the securing of favorable action on our part be made a prerequisite to the effectiveness of any state order. Such a procedure would enable us to pass upon a specific proposal and obviate the semblance of consenting in advance to construction, the extent and expense of which could only be surmised. We think the expression of the Supreme Court in *R. R. Comm. v. Southern Pacific Co., supra,* at page 346, to the effect that our certificate is, in the instances therein specified, 'a condition precedent to the validity * * * of any order by the State Commission,' is not inharmonious with these views." (*First Federal Commission Decision, supra,* p. 459.)

Subsequent to the decision of the Federal Commission the proceedings before the State Commission were reopened and after further hearings the State Commission rendered its third decision and order under review herein. (*Third State Commission Decision, supra.*)

Petitions were thereafter filed with the Interstate Commerce Commission by the State Commission praying that the certificates issue in accordance with the findings made by the Interstate Commerce Commission in the *First Federal Commission Decision, supra,* and by the City of Los Angeles also asking for such certificates and in addition that an order be entered requiring the Railroads to

construct and thereafter operate a union passenger station and appurtenances in substantial compliance with the State Commission's Exhibit 4-b. (R. p. 142.)

The Interstate Commerce Commission then made its second decision and order again holding that it was without authority to require the construction and operation of a union passenger station. The Commission, however, pursuant to the prayer of the State Commission and the City of Los Angeles and in accordance with its interpretation of the decision of this Court in *First Los Angeles Case, supra,* issued its certificates under Paragraphs 18 to 21 of Section 1 of the Interstate Commerce Act, authorizing the proposed constructions and abandonments.[1]

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(1) The certificate and order of the Commission were in the following form:

"It is hereby certified, That the present and future public convenience and necessity (1) require the construction by Los Angeles & Salt Lake Railroad Company, the Southern Pacific Company, and the Atchison, Topeka & Santa Fe Railroad Company of extensions of their respective main lines of railroad in the City of Los Angeles, Calif., so as to reach and serve a union passenger station and terminal which they may construct in the Plaza district, pursuant to the order of the Railroad Commission of the State of California to that effect; (2) require the construction of the necessary extensions of their main lines, and permit the abandonment of such other portions of their main lines, as may be necessary to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal; (3) permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in the City of Los Angeles, Calif.; and (4) require the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the City of Los Angeles, Calif., as may be incidental, and necessary or convenient, to the proper operation of such union passenger station and terminal." (*Second Federal Commission Decision, supra* (R. pp. 153-154).)

The City of Los Angeles petitioned the Supreme Court of the District of Columbia for a writ of mandamus to compel the Interstate Commerce Commission to consider the evidence before it in the *Los Angeles Passenger Terminal Cases* to determine whether it should require the Railroads to construct and operate a union passenger station in the City of Los Angeles. This petition was dismissed by the Supreme Court of the District, reversed by the Court of Appeals of the District of Columbia, which Court was in turn reversed by this Court in the *Second Los Angeles Case, supra.*

Thereafter, the State Court, upon the authority of the decisions of this Court in both the *First* and *Second Los Angeles Cases, supra,* held that Congress had not entered the field of regulation respecting the establishment of union passenger stations so as to terminate the State's power to deal with the subject, but that Congress had "merely occupied the field of supervising and ascertaining the jurisdictional facts with relation to the establishment of such stations." (R. p. 193.) The State Commission order was upheld as a reasonable exercise of the police power, it being held that "there is nothing unreasonable or arbitrary in the findings and order made," and that "the findings of the Railroad Commission were made after full consideration and upon ample evidence." (R. pp. 196, 197.)

In brief appellants urge: (1) that the Commission order is in conflict with the Commerce Clause of the Federal Constitution and certain provisions of the Interstate Commerce Act; (2) that the certificates issued by the Interstate Commerce Commission are void and (3) that the Commission order deprives them of constitutional rights

in violation of the Fourteenth Amendment to the Federal Constitution. We shall answer these contentions in the order presented.

CORRECTIONS IN APPELLANTS' STATEMENT OF THE CASE.

Appellants in their statement of the case (Brief of Appellants, pp. 4-15) have made certain erroneous statements of fact which call for correction or other comment:

(1) The appellants, at page 4, state that at the commencement of the proceedings leading up to the order now under review they had separate passenger stations in the City of Los Angeles "none of which is in the vicinity of the other." This statement is inaccurate. California Railroad Commission Exhibit 5 (R. p. 426) shows that the old Salt Lake passenger depot was located directly across the river from the Santa Fe depot, less than one-quarter mile away, while the Santa Fe depot is located only between one-half mile and three-quarters mile from the Southern Pacific's depot. The exhibit referred to also shows the Plaza site and shows that the existing station sites and Plaza site are all within close proximity of each other and within the general "railroad and industrial district" of Los Angeles.

(2) At page 8, the appellants state that the Interstate Commerce Commission in its *First Federal Commission Decision, supra,* issued certain certificates. The Commission made six specific findings of fact in said decision (R. p. 138), but deferred the issuance of certificates to await such further action, if any, as the California Railroad Commission might take. In its second decision,

Second Federal Commission Decision, supra, it reaffirmed its previous findings and issued the *certificates,* which this Court had specified in *First Los Angeles Case, supra.* (pp. 344-348.)

(3) At page 11, the carriers have made a general reference to an ultimate capital expenditure for all recommendations of from twenty-five million to forty-five million dollars. These figures have absolutely no bearing upon the present case. When used by the California Railroad Commission in its *First State Commission Decision, supra* (R. pp. 68-69); they had to do with the "ultimate plan" worked out by engineers of the Commission covering a large number of different projects in Los Angeles County, of which the union passenger station project was but one item. The said ultimate plan was never adopted by the California Railroad Commission. As already pointed out, the construction ordered by the State Commission is to cost approximately $10,000,000 gross and $5,500,000 net new money. The accuracy of these estimates are nowhere challenged in appellants' brief.

(4) At page 11, there appears a statement that "with the exception of the reduced estimated cost and the requirement of the elimination of grade crossings over the Salt Lake and Santa Fe tracks on the river bank * * * the State Commission's order now under review is practically identical with its original orders." Certain differences should be noted. The order now under review differs from the previous orders in that it expressly provided that it is to become effective only "from and after the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and

sufficient certificates or other appropriate order or orders covering and authorizing the construction, extensions, and abandonments herein authorized or directed." (R. p. 134.) Furthermore, the order now under review refers to a definite plan shown on Commission Exhibit 4-b and specifies a definite gross cost of $10,000,000, whereas the first order did neither.

(5) At page 12 of their brief, appellants state that the Railroad Commission's order "involves the acquisition of new land, about forty acres, a portion of which is owned by some of the railroads." The fact is that of the land required under the Plaza plan over two-thirds thereof is now in Southern Pacific ownership. (R. p. 297.)

(6) At page 15, the appellants have erroneously paraphrased what the Supreme Court of California held in the decision under review. The Supreme Court did not hold that the State Commission's order did not violate the constitutional rights of the carriers "in requiring them to abandon adequate passenger facilities," for the reason that the record before the State Commission showed the existing passenger terminal facilities of the carriers to be inadequate. The State Court did not hold that the Railroads could be required to extend their main lines of railroad "to reach new territory not theretofore served by them," for the reason that the Commission's order does not provide for any extension into new territory not theretofore served by said Railroads. Furthermore, the State Court did not direct any railroad to permit another railroad to use its main-line tracks or facilities without compensation.

SUMMARY OF ARGUMENT.

I. THE RAILROAD COMMISSION OF CALIFORNIA UNDER SPECIFIC STATUTORY PROVISIONS IS VESTED WITH AUTHORITY TO REQUIRE RAILROADS TO PROVIDE ADEQUATE PASSENGER TERMINAL FACILITIES, INCLUDING UNION PASSENGER STATIONS.

II. THE TRANSPORTATION ACT, 1920, DID NOT DIVEST THE STATES OF THEIR JURISDICTION TO REQUIRE THE CONSTRUCTION OF UNION PASSENGER STATIONS.

A. Federal legislation will be strictly construed and taken to supersede state authority only to the extent necessary to avoid defeating express provisions of acts of Congress.

B. The Transportation Act, 1920, is silent upon the subject of construction of union stations.

C. In the enactment of the Transportation Act, 1920, Congress did not intend to deprive the states of their jurisdiction over union station matters.

D. The decisions of this Court in the *First Los Angeles Case, supra,* and the *Second Los Angeles Case, supra,* support the view that the Transportation Act, 1920, did not divest the states of their jurisdiction.

E. The California Supreme Court in the decision under review correctly construed the decisions of this Court in this matter.

F. The Railroad Commission's order does not contravene the Commerce Clause of the Federal Constitution or any provision of the Interstate Commerce Act.

G. The order of the State Commission does not require the joint use of main lines or connections between main lines.

III. THE CERTIFICATES ISSUED IN THE ORDER OF THE INTERSTATE COMMERCE COMMISSION ARE LAWFUL. THE QUESTION OF THE LAWFULNESS OF SAID CERTIFICATES WAS NOT DETERMINED BY THE STATE COURT NOR PROPERLY PRESENTED TO SAID COURT FOR DETERMINATION.

A. The certificates issued in the order of the Interstate Commerce Commission are lawful.

B. The question of the lawfulness of said certificates was not determined by the State Court nor properly presented to said Court for determination.

IV. THE STATE COMMISSION ORDER IS A REASONABLE EXERCISE OF THE POLICE POWER AND DOES NOT DEPRIVE THE RAILROADS OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW OR DENY THEM THE EQUAL PROTECTION OF THE LAWS OR TAKE THEIR PROPERTY FOR PUBLIC USE WITHOUT JUST COMPENSATION IN CONTRAVENTION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

A. In the exercise of the police power, public authority may properly require the construction and operation of union passenger stations so long as the particular order is reasonable.

B. Authorities relied upon by the State Court in the decision under review are sound.

C. The authorities on which the Railroads rely are not in point.

D. The order of the Railroad Commission of California is a reasonable exercise of the police power.

(1) The Southern Pacific passenger terminal facilities are inadequate.

(2) The Atchison, Topeka & Santa Fe and Los Angeles and Salt Lake passenger terminal facilities are inadequate.

(3) The public convenience and necessity require the establishment of a union passenger terminal in the Plaza area.

(4) The Plaza plan.

(5) The Railroads' proposal for improving their passenger terminal facilities.

(6) The estimated cost of the Plaza plan as ordered by the State Commission is less than the sum proposed to be immediately expended by defendant Railroads for separate facilities.

E. The ruling of the California Supreme Court that the findings and order of the California Commission are reasonable and supported by ample evidence must be sustained.

F. The appellants are in error in urging that the State Commission's order requires the joint use of any of their property without compensation first paid.

G. In the issuance of its order the Railroad Commission has not acted under the guise of exercising its police power over grade crossings.

H. The order of the State Commission does not require the Railroads, or any of them, to abandon adequate passenger terminal facilities, but is directed at the existing inadequacies of the passenger terminal facilities of each of said Railroads.

ARGUMENT.

I.

THE RAILROAD COMMISSION OF CALIFORNIA UNDER SPECIFIC STATUTORY PROVISIONS IS VESTED WITH AUTHORITY TO REQUIRE RAILROADS TO PROVIDE ADEQUATE PASSENGER TERMINAL FACILITIES, INCLUDING UNION PASSENGER STATIONS.

The Railroad Commission of California, by specific statutory provisions, is given full power and authority to make an order for the construction, maintenance and operation of a union passenger station, as ordered in the *Third State Commission Case, supra.*

The Railroad Commission of California is created by the California Constitution, Article XII, Sections 22 and 23. (Set forth in full in the appendix to this brief, pp. 6-11.) Under these sections the authority of the legislature to confer additional powers upon the Railroad Commission is expressly declared to be plenary and unlimited by any provision of said Constitution.

The state legislature in the enactment of the Public Utilities Act of California (Stats. 1915, p. 115, as amended), Sections 13(b), 22(a), 30, 31 and 36 (set forth in full in the appendix to this brief, pp. 12-15), conferred upon the State Commission full power and authority to make an order for the construction and operation of a union passenger station, such as the order which has been issued in this matter. Section 36 of the Public Utilities Act provides:

> "Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any

public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the commission orders the erection of a new structure, it may also fix the site thereof. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the commission has ordered to be erected, require joint action by two or more public utilities, the commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the commission shall have authority, after further hearing to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured."

In construing the above cited constitutional and statutory provisions, the California Supreme Court in its opinion stated:

> "The Constitution of this state expressly provides that the authority of the legislature to confer powers upon the Railroad Commission is plenary and unlimited by any provision of the Constitution. (Const. of Cal., art. XII, secs. 22 and 23; Pac. Tel. and Tel. Co. v. Eshleman et al., 166 Cal. 640.)
>
> "There can be no question that the legislature by the Public Utilities Act (Stats. 1915, chap. 91, p. 115), sections 13b, 22a, 30, 31 and, particularly by section 36 thereof, has conferred upon the Railroad Commission powers broad enough to include the ones sought to be exercised by said Commission herein." (*Second State Court Case.*) (R. pp. 192, 193.)

Section 36 of the Public Utilities Act, it will be noted, covers the cost of joint construction by two or more public utilities. It gives to the State Commission specific authority to fix the *site* of any *new* structure. It sets up the necessary machinery for determining the portion of the cost of the additions, extensions, or new structure to be borne by each of the participating public utilities. The statute, therefore, meets the requirements prescribed by this Court in the *Second Los Angeles Case, supra,* (p. 69) in the establishment of "tribunals to apportion the expenditures and cost as between the carriers."

II.

THE TRANSPORTATION ACT, 1920, DID NOT DIVEST THE STATES OF THEIR JURISDICTION TO REQUIRE THE CONSTRUCTION OF UNION PASSENGER STATIONS.

In construing the Transportation Act of 1920, and in considering its effect upon the jurisdiction of the states over union station matters, we must look to the purpose and intention of Congress in the enactment of said legislation. (*Savage v. Jones* (1912), 225 U. S. 501, 533.)

Under Point I of the Railroads' brief (pp. 27 et seq.), it is contended that all jurisdiction of the states over the matter of union passenger stations is at an end for the reason that Congress has dealt with the subject in a limited manner. This contention is unsound and leaves out of consideration entirely the question of whether it was the *purpose* and *intention* of Congress to exclude the states from further action in such matters. Most assuredly Congress may take action on a certain subject as by providing that the Interstate Commerce Commission shall have authority to issue certificates covering extensions and abandonments of railroad tracks incidental to the establishment of a union passenger station, and yet clearly manifest a purpose and intention that the states should retain jurisdiction which they theretofore possessed under the police power to require the construction and operation of union passenger stations.

A. Federal Legislation will be Strictly Construed and Taken to Supersede State Authority Only to the Extent Necessary to Avoid Defeating Express Provisions of Acts of Congress.

It is well settled that while the federal authority under the commerce clause is paramount, even though trenching upon the reserve power of the state, that where Con-

gress' occupation of the field is only partial, a state is left free to act as to matters not covered by or repugnant to the federal legislation.

Savage v. Jones (1912), 225 U. S. 501, 533;
Sligh v. Kirkwood (1915), 237 U. S. 52;
M. K. & T. Rwy. Co. v. Harris (1914), 234 U. S. 412;
Missouri Pacific Rwy. Co. v. Larabee Flour Mills Co. (1909), 211 U. S. 612;
Atlantic Coast Line R. Co. v. Georgia (1914), 234 U. S. 280, 293;
Reid v. Colorado (1912), 187 U. S. 137, 149.

It is well settled that federal legislation so trenching upon the power of a state will be strictly construed, that is, it will be taken to supersede state authority only to the extent necessary to avoid defeating express provisions of the acts of Congress.

M. K. & T. Rwy. v. Haber (1898), 169 U. S. 613, 623;
Savage v. Jones (1912), 225 U. S. 501, 533;
Illinois Central Rwy. Co. v. Public Utilities Com. (1918), 245 U. S. 493, 510;
Lehigh Valley Rwy. Co. v. Public Utility Com. (1928), 278 U. S. 24, 35.

In the leading case of *Savage v. Jones, supra,* it was held that the passage by Congress of the Food and Drug Act of 1906, which, among other things, prohibited misbranding, did not prevent the states from regulating the sale and requiring to be affixed a statement of ingredients and minimum percentage of fat and proteins. Mr. Justice Hughes stated the general rule as follows (p. 533):

"Is, then, a denial to the state of the exercise of its power for the purposes in question necessarily implied in the Federal statute? For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must, of course, be considered, and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished —if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power. *Texas & P. R. Co. v. Abilene Cotton Oil Co.*, 204 U. S. 426, 51 L. ed. 553, 27 Sup. Ct. Rep. 350, 9 Ann. Cas. 1075; *Northern P. R. Co. v. Washington*, 222 U. S. 370, 378, ante, 237, 239, 32 Sup. Ct. Rep. 160; *Southern R. Co. v. Reid*, 222 U. S. 424, 436, ante, 257, 260, 32 Sup. Ct. Rep. 140.

"But the intent to supersede the exercise by the state of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress, fairly interpreted, is in actual conflict with the law of the state. This principle has had abundant illustration. *Chicago, M. & St. P. R. Co. v. Solan*, 169 U. S. 133, 42 L. ed. 688, 18 Sup. Ct. Rep. 289; *Missouri K. & T. R. Co. v. Haber*, 169 U. S. 613, 42 L. ed. 878, 18 Sup. Ct. Rep. 488; *Reid v. Colorado*, 187 U. S. 137, 47 L. ed. 108, 23 Sup. Ct. Rep. 92, 12 Am. Crim. Rep. 506; *Pennsylvania R. Co. v. Hughes*, 191 U. S. 477, 48 L. ed. 268, 24 Sup. Ct. Rep. 132; *Crossman v. Lurman*, 192 U. S. 189, 48 L. ed. 401, 24 Sup. Ct. Rep. 234; *Asbell v. Kansas*, 209 U. S. 251, 52 L. ed. 778, 28 Sup. Ct. Rep. 485, 14 Ann. Cas.

1101; *Northern P. R. Co. v. Washington*, 222 U. S. 370, 379, ante, 237, 240, 32 Sup. Ct. Rep. 160; *Southern R. Co. v. Reid*, 222 U. S. 424, 442, ante, 257, 262, 32 Sup. Ct. Rep. 140."

In the earlier case of *Missouri K. T. Rwy. Co. v. Haber*, *supra*, it was held that the Federal Animal Industry Act making it a misdemeanor for any person or corporation to transport cattle known to be affected with contagious disease, did not prevent a state from imposing a civil liability for damages sustained by owners of domestic cattle by reason of the importation of such diseased cattle. Mr. Justice Harlan stated the rule as follows (p. 623):

"May not these statutory provisions stand without obstructing or embarrasing the execution of the act of Congress? This question must of course be determined with reference to the settled rule that a statute enacted in execution of a reserved power of the state is not to be regarded as inconsistent with an act of Congress passed in the execution of a clear power under the Constitution, unless the repugnance or conflict is so direct and positive that the two acts cannot be reconciled or stand together. *Sinnot v. Davenport*, 63 U. S. 22 How. 227, 243."

In *Illinois Central Railroad Company v. Public Utilities Commission of Illinois*, 245 U. S. 493, Mr. Justice Van Devanter said (p. 510):

"In construing Federal statutes enacted under the power conferred by the commerce clause of the Constitution the rule is that it should never be held that Congress intends to supersede or suspend the exercise of the reserved powers of a state, even where that may be done, unless, and except so far, as its purpose to do so is clearly manifested. *Reid v.*

Colorado, 187 U. S. 137, 148, 47 L. ed. 108, 114, 23 Sup. Ct. Rep. 92, 12 Am. Crim. Rep. 506; *Cummings v. Chicago,* 188 U. S. 410, 430, 47 L. ed. 525, 531, 23 Sup. Ct. Rep. 472; *Savage v. Jones,* 225 U. S. 501, 56 L. ed. 1182, 32 Sup. Ct. Rep. 715; *Missouri K. & T. R. Co. v. Harris,* 234 U. S. 412, 419, 58 L. ed. 1377, 1382, L. R. A. 1915E, 942, 34 Sup. Ct. Rep. 790. This being true of an act of Congress, it is obvious that an order of a subordinate agency, such as the Commission, should not be given precedence over a state rate statute otherwise valid, unless, and except so far as, it conforms to a high standard of certainty."

In the recent case of *International Shoe Company v. Pinkus,* 278 U. S. 261, decided on January 2, 1929, Mr. Justice Butler said (p. 265):

"The general rule is that an intention wholly to exclude state action will not be implied unless, when fairly interpreted, an Act of Congress is plainly in conflict with state regulation of the same subject. *Savage v. Jones,* 225 U. S. 501, 533; *Illinois Central R. R. Co. v. Public Utilities Commission,* 245 U. S. 493, 510; *Merchants Exchange v. Missouri,* 248 U. S. 365."

In *Snyder v. New York C. & St. L. R. Co.* 118 Ohio St. 72, 160 N. E. 615, an eminent domain action had been brought for the purpose of condemning land for railroad purposes. The defendant land owner raised the point that the plaintiff railroad company was not a *de jure* corporation for the reason that, although it had complied with the laws of the affected states in effecting a consolidation of a number of existing railroad companies, the plaintiff had not secured the authority of the Interstate Commerce Commission under Section 5 of the

Interstate Commerce Act, added by the Transportation Act, 1920. Section 5 is the section of the Act which contains the so-called railroad consolidation provisions. The Supreme Court of Ohio held that the authority of the states over railroad consolidations continued notwithstanding the provisions of Section 5 of the Interstate Commerce Act. At page 620, the Court said:

> "The cases which are found most helpful to the instant controversy are those which have declared that the intent of Congress to supersede the exercise of the police power by the states will not be inferred unless the act of Congress, fairly interpreted, is in actual conflict with the state law. This was expressly stated in *Savage v. Jones, State Chemist*, 225 U. S. 501, 32 S. Ct. 715, 56 L. ed. 1182, in deciding the conflict between the Food and Drug Act of Indiana (Act 1907, c. 206) and the Federal Food and Drug Act of 1906. (21 USCA Section 1 et seq.)"

Continuing, the Court said:

> "These and other cases clearly show that every act of Congress must be interpreted in the light of the purposes to be served, the relation to the public welfare, and the particular language employed in the act itself. In the light of all those cases, we find nothing in the Transportation Act of 1920, prohibiting consolidations under state statutes, where no anti-trust legislation is violated, during the interim of formulation and adoption of a complete plan of unification. It seems more reasonable to hold that Congress has merely surveyed the field without fully occupying it, and that section 5 of the Interstate Commerce Act, as amended, operates as a caveat and a warning, but not as an injunction."

In *Snyder v. New York, Chicago & St. Louis Railroad Co.*, 278 U. S. 573, the Supreme Court of the United States

on December 3, 1928, dismissed the writ of error. Thereafter, on January 2, 1929, the Court substituted for said order the following order (278 U. S. 578):

> "This case is affirmed on the ground that Section 407 of the Transportation Act of 1920, 41 Stat. at L. 480, ch. 91, U. S. C. title 49, Sec. 5, amending Section 5 of the Interstate Commerce Act, has not as yet become applicable to cases like this."

B. The Transportation Act, 1920, is Silent Upon the Subject of Construction of Union Stations.

The Interstate Commerce Act is silent upon the subject of the construction of union passenger stations. The Transportation Act, 1920, added nothing in this regard. As was said by this Court, *Second Los Angeles Case, supra* (p. 67):

> "In weighing the effect of the Transportation Act, it should be noted that in this important measure affecting associations between interstate carriers of a compulsory character, *there is nowhere express authority for the establishment of union passenger stations, compulsory or otherwise.*"

Appellants point to Paragraphs 3 and 4 of Section 3 (added by Section 405, Transportation Act, 1920), and Paragraphs 18-21 of Section 1 of the Interstate Commerce Act (added by Section 402, Transportation Act, 1920), in support of their contention that Congress has completely occupied the field. (Said provisions of the Interstate Commerce Act are set forth in the appendix to this brief, pp. 1-5.) Of the provisions mentioned, Paragraph 4 of Section 3 is the only one applicable to terminal facilities. It applies only to *existing* terminals and provides in brief that the Commission, if it finds it to be in the

public interest and practicable without substantially impairing the ability of the carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, may "require the use of any such terminal facilities, including main line track or tracks for a reasonable distance outside of said terminal" by a carrier or carriers on such terms and for such compensation as the carriers may agree upon, or as the Commission may fix in the event the carriers fail to agree. The provisions of Paragraph 4 of Section 3 obviously apply only to *existing* terminal facilities and have no bearing whatever on the construction of *new* stations.

Paragraphs 18-21 of Section 1 do not apply to *terminals.* They do, however, apply to certain *incidents* which necessarily result from the construction and operation of a terminal station as was held in the *First Los Angeles Case, supra.* Under said provisions of the Interstate Commerce Act the Commission must make its findings and issue its certificates approving the proposed extensions and abandonments of railroad lines, and find that the expense involved will not impair the ability of the carriers concerned to perform their duty to the public. Thus, as was said in the *First Los Angeles Case, supra,* the Interstate Commerce Commission under Paragraphs 18-21 of Section 1 possesses the "means of control over installation of such new union stations," and such a certificate is required "as a condition precedent to the validity of any action by the carriers or of any order by the State Commission."

The limited "supervisory" jurisdiction of the Interstate Commerce Commission which it possesses over the matter of the construction of union stations is not an

occupation of the field of regulation of such matters. There can never be a conflict between state authority and federal authority. A state can never carry out its mandate directing the construction of a station until the Interstate Commerce Commission as a "condition precedent" first makes its "supervisory" findings (1) that public convenience and necessity require the proposed construction and abandonments, and (2) that the expense involved will not impair the ability of the carriers to perform their duty to the public. These "supervisory" findings of the Interstate Commerce Commission have been made (*Second Federal Commission Decision, supra*) (R. pp. 144, 145, 153, 154), and the order of the State Commission has become effective. (R. pp. 197, 198.)

C. In the Enactment of the Transportation Act, 1920, Congress Did Not Intend to Deprive the States of Their Jurisdiction Over Union Station Matters.

In determining the purpose and intent of Congress on the subject of union passenger stations, recourse may be had both to the proceedings by Congress during consideration by it of the Transportation Act, 1920, and to the language of the Act itself.

The propriety of referring to statements made by a committee member in charge of a bill, of course, is well recognized.

U. S. v. St. Paul Rwy. (1918), 247 U. S. 310, 315-318;

Duplex Printing Co. v. Deering (1921), 254 U. S. 443, 474-477;

Wisconsin Passenger Fare Case (1922), 257 U. S. 563, 589;

N. Y. v. Winfield (1917), 244 U. S. 147, 150.

It is significant to note the statement appearing in the footnote below,[1] made by Congressman Esch, chair-

(1) The following appears in vol. 58, p. 9, Congressional Record, 66th Cong., 1st sess., Nov. 15, 1919, pp. 8578, et seq.:

"Mr. McClintic. Mr. Chairman, I offer the following amendment which I send to the desk and ask to have read.

"The clerk read as follows:

Amendment offered by Mr. McClintic: Page 55, line 9, after the word 'prescribe,' insert:

"'*Provided further*, that the commission is hereby given authority to require a carrier to maintain his present arrangement or to make new arrangements relative to the joint use of depots, upon such terms as shall be found by the commission to be just and reasonable. No carrier shall be allowed to discontinue the use of a depot in connection with another carrier until proper application has been made to the commission.'"

(There followed a statement by Mr. McClintic showing that his amendment was induced by apprehension that the advantages of joint depots enjoyed by the public under the Railroad Administration would be denied after termination of federal control and that the proposed bill took from the State Commissions their powers in respect thereof.)

"Mr. Esch (8579). Mr. Chairman, the matter which the gentleman from Oklahoma seeks to reach by his amendment lies almost wholly within the police power of the several States. There have been amendments offered to this bill seeking to preserve such police powers. The committee in framing the bill sought not to encroach upon such powers. The matter of depots and joint use of depots is practically in the jurisdiction of the State Commissions, and all but one of the States have such commissions. In such small matters, the detail should be left within the jurisdiction of the State authorities, who know the conditions, and know how best to meet the needs. There is, however, a provision in this bill providing for the joint use of terminals.

"Mr. McClintic. Will the gentleman yield?

"Mr. Esch. But that power will be exercised, I have no doubt, mainly in connection with the terminals in the large cities and in the congested centers. Due to the prohibitive cost of land, it is necessary to get a greater use out of *existing terminals* by giving to some regulatory authority, like the Interstate Commerce Commission, the right to order the joint use of such terminals, but that that power should be exercised as to depots in small communities is not contemplated. That power should be left, as we leave it, to the regulatory bodies of the several States. I now yield to the gentleman from Oklahoma. (Italics ours.)

"Mr. McClintic. Does the gentleman think that the State commissions will have a sufficient amount of jurisdiction to handle a question of this kind?

man of the House Committee, and in charge of the bill (known as Esch-Cummins bill) which, after some changes,

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"Mr. Esch. Most certainly. They do under the powers granted in my State, and I think it is true in many States. I do not know the situation in Oklahoma.

"Mr. McClintic. The gentleman does not feel that this bill takes away any of their jurisdiction?

"Mr. Esch. No.

"Mr. McClintic. Mr. Chairman, upon the statement of the chairman of the committee I will be glad to withdraw the amendment.

"The Chairman. The gentleman from Oklahoma asks unanimous consent to withdraw his amendment. Is there objection?

"Mr. Linthicum. Mr. Chairman, I object.

* * * * * * *

"The Chairman (8582). The question is on agreeing to the amendment offered by the gentleman from Oklahoma (Mr. McClintic).

"The question was taken and the amendment was rejected."

The bill (H. R. 10,453) had been reported by the House with its report, No. 456 (Cong. Rec., vol. 58, 66th Cong., 1st sess., p. 8265), and was debated (Ibid. 8309-8692). In the proposed bill under consideration at the time the above remarks were made by Congressman Esch the provision in respect of joint use of terminals (H. R. 10,453, sec. 405 (2)) were not the same as finally enacted. The provisions of the original bill and the changes made by the Senate amendments and the conference committee are outlined in the following, taken from House Report No. 650 (66th Cong., 2d sess.) submitted by Mr. Esch with H. R. 10,453 from committee of conference (59th Cong. Rec. p. 3263; MacVeagh on Transportation Act, 1920, p. 252):

"Section 405 of the House bill provided that the commission might require the terminal of any carrier to be open to the traffic of other carriers upon such terms and for such compensation as the commission might prescribe. The Senate amendment, in section 11, provided that the transportation board might require one carrier to permit another carrier to use its 'terminal or other facilities, including main-line track or tracks for a reasonable distance outside of such terminals,' on such terms as the carriers might agree on or as the board might fix. Section 405 of the conference bill contains provisions on this subject similar to those in the Senate amendment. It is provided that the commission, if it is found to be in the public interest and practicable, may require one carrier to allow another to use its terminal facilities, 'including main-line track or tracks for a reasonable distance outside of such terminal,' on such terms as the carriers may agree upon or as the commission may fix, subject to the right, however, of the carrier whose terminal facilities are thus thrown open to sue for any damages sustained or any compensation owed."

became the Transportation Act, 1920. The statement in question shows not only the view that authority over union stations was in the State Commissions prior to 1920, but also that the committee, in framing the new bill, had so sought not to encroach on such state authority, and that while there was a provision in respect of joint use of existing terminals, its purpose was to empower the Commission to conserve revenues from the standpoint of the whole transportation service by making full use of existing facilities, although owned by an individual carrier.

The statement was quoted with approval in *North Carolina Corporation Commission v. Southern Railway* (Selma Station case) (1923), 185 N. C. 435, and in *First Federal Commission Decision, supra* (p. 428). (Appendix to this brief, pp. 40-42.)

D. The Decisions of this Court in the First Los Angeles Case, Supra, and the Second Los Angeles Case, Supra, Support the View that the Transportation Act, 1920, Did Not Divest the States of Their Jurisdiction.

The two decisions of this Court in the *First Los Angeles Case, supra,* and the *Second Los Angeles Case, supra,* show that this Court was, and is of the opinion that the jurisdiction of the California Railroad Commission continued and may be exercised and its orders in this regard may become effective after the Interstate Commerce Commission has made the necessary findings and issued the necessary certificates.

In the *First Los Angeles Case, supra* (p. 346), this Court said that the situation comes "within paragraphs 18 to 21 of Section 402 and requires a certificate of the Interstate Commerce Commission as a condition precedent

to the validity of any action of the carriers or *of any order by the state commission.*"

Again at page 348 of the same case, this Court said:

> "Until the Interstate Commerce Commission shall have acted under Paragraphs 18 to 21 of Section 402 of the Transportation Act, the respondent railways cannot be required to provide a new interstate union station and to extend their main tracks thereto *as ordered by the State Railroad Commission.*"

In the *Second Los Angeles Case, supra* (p. 61), this Court interpreted its first decision as declaring that the necessary certificates must first be secured from the Interstate Commerce Commission

> "as a condition precedent to the validity of any action by the carriers or *of any order by the State Railroad Commission,* and that until the Interstate Commerce Commission had acted under those paragraphs, the carriers could not be required to provide a new union station or to extend their main tracks thereto *as ordered by the State Railroad Commission.*"

In these various references to an *order* of the State Railroad Commission, to be conditioned only upon the issuance of certificates of the Interstate Commerce Commission under Paragraphs 18 to 21 of Section 402, we believe that this Court has shown a continuing conviction that Congress did not intend to take from the states the power to make such order. Under these two decisions, read together, we believe there is no reasonable doubt that Congress in enacting the Transportation Act, 1920, did not take from the State of California its jurisdiction to make the mandatory order which the said Com-

mission has actually made conditioned only upon the issuance of the necessary certificates by the Interstate Commerce Commission.

E. The California Supreme Court in the Decision Under Review Correctly Construed the Decisions of this Court in this Matter.

The California Supreme Court in construing the decisions of this Court in the *First Los Angeles Case, supra,* and the *Second Los Angeles Case, supra,* and in concluding that Congress in the enactment of the Transportation Act, 1920, had not entered the field of regulation of union passenger station matters so as to divest the states of their jurisdiction in the premises stated:

> "It is urged, however, by petitioners that even though it be true that the Interstate Commerce Commission has no power to enter the order for the erection and maintenance of a union station, the fact that it has some powers given it over the general subject matter indicates that Congress 'has entered the field' of regulation respecting the establishment of union stations to such an extent as to automatically terminate the state's power to deal with that subject. The most decisive answer to this question is that the language of the decision of the Supreme Court of the United States, in the first Los Angeles Terminal case, is to the effect that an order is to be made by the state commission, conditioned only upon the proper findings and certificates of the Interstate Commerce Commission.
>
> "If we examine into the question independently of said decision of the Supreme Court of the United States we find that the Supreme Court of California, prior to the Transportation Act of 1920, assumed, at least, that the Railroad Commission had jurisdiction

to order the erection and maintenance of a union station, for in the case of Civic Center Assn. v. Railroad Commission, 173 Cal. 441, this court directed the Commission to proceed with a hearing and determination on the merits of a complaint which included a demand for a union station order. Later, in the case of Atchison, Topeka & Santa Fe Railway Co. v. R. R. Comm., supra, this court held that the Railroad Commission had been divested of such power by the Federal Transportation Act of 1920, and if this conclusion be out of harmony with the view of the United States Supreme Court, as the two decisions of that court with reference to this matter show it to be, then, assuredly, the power mentioned, never having been divested, is vested at present in the State Railroad Commission." (R. p. 192.)

"While it is beyond question that if the Congress of the United States had 'occupied the field' of providing for the erection and maintenance of union passenger stations, the power of the state in that matter would have been supplanted and no coordinate power would exist in the State Commission, this situation does not exist under the decision of the United State Supreme Court to the effect that Congress has merely occupied the field of supervising and ascertaining the jurisdictional facts with relation to the establishment of such stations." (R. p. 193.)

These holdings of the California Supreme Court, we respectfully submit, are in full accord with the decisions of this Court in the *First Los Angeles Case, supra,* and *Second Los Angeles Case, supra.*

F. The Railroad Commission's Order Does Not Contravene the Commerce Clause of the Federal Constitution or Any Provision of the Interstate Commerce Act.

The carriers devote pages 27 to 61 of their brief to the proposition that the Railroad Commission's order contravenes the Commerce Clause of the Federal Constitution and certain provisions of the Interstate Commerce Act.

In the light of the facts of this case and in view of the authorities above developed, we submit that the California Supreme Court was clearly right when it held that there was no merit to these contentions. The appellants in this regard seek to make it appear that the State Commission's order requires them to perform seven different and separate classes of acts. (Brief of Appellants, pp. 27-29.) That this contention is highly fanciful is readily apparent from an examination of the Commission order. (R. p. 133.) The order requires one principal act, that is, the construction of a union passenger station. In so far as the collateral acts are to be performed, they are merely what this Court has properly termed the "essential incidents" of said station. (*First Los Angeles Case, supra,* p. 341.) The State Commission in its order referred to these incidental acts as such "as may be reasonably necessary and incidental to the use of said union passenger station." (R. p. 133.)

The incidental matters referred to by the railroads are such matters as the extensions of lines, the construction of track connections and certain track abandonments in so far as these matters are necessarily involved in the union station project. (Brief of Appellants, pp. 35-41.) In support of their contentions that Congress has occupied

the field of regulation of these incidentals, appellants rely particularly on paragraphs 3 and 4 of section 3 and paragraphs 18-21 of section 1 of the Interstate Commerce Act. As pointed out above in this brief, pp. 27-29, we find that paragraph 4 of section 3 is the only provision applicable to terminal facilities. It applies only to *existing* terminals and provides, in brief, that the Commission if it be in the public interest and practicable without substantially impairing the ability of the carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, may "require the use of any such terminal facilities, including main-line track or tracks for a reasonable distance outside of said terminal" by a carrier or carriers on such terms and for such compensation as the carriers may agree upon, or as the Commission may fix in the event the carriers fail to agree. The provisions of paragraph 4 of section 3 obviously apply only to *existing* terminal facilities and have no bearing whatever on the construction of *new* stations. None of the provisions of the above mentioned sections of the Interstate Commerce Act give to the Commission the power to *require* the performance of any of the *incidental* acts. The appellants have referred to no provisions of the Interstate Commerce Act which purport to give this power to the Federal Commission. Although it is true that the Interstate Commerce Act contains in various portions thereof general language referring to the construction of facilities, the extensions and abandonments of lines and the general use of tracks, this Court held in *Second Los Angeles Case, supra,* in commenting on its earlier decision in *Alabama and Vicksburg Railway Co. v. Jackson & Eastern Railway Co.*, 271 U. S. 244, that

such language is too general to be properly construed as referring to union passenger stations. (*Second Los Angeles Case,* pp. 52; 66-67; Appendix to this brief, pp. 115-118.)

G. The Order of the State Commission Does Not Require the Joint Use of Main Lines or Connections Between Main Lines.

Appellants in their brief (p. 35) urge that the order of the State Commission requires the joint use of main-line tracks and connections between main lines and thus invades the jurisdiction of the Interstate Commerce Commission. *Alabama Railway v. Jackson Railway,* 271 U. S. 244, is cited for the proposition that jurisdiction to issue such orders is exclusively delegated to the Interstate Commerce Commission.

The answer to this contention is that the order does not have the effect attributed to it by appellants. (See terms of order R. p. 133.) Under the order appellants are not required to jointly use main-line tracks or connect such tracks. It was recognized by this Court in the *First Los Angeles Case, supra* (p. 340), that each of the carriers could build its own main lines to the station without jointly using main-line tracks. In that decision it was said:

> "The changes to be effected under the order will require, in the abandonment of the Southern Pacific main track on Alameda Street for 3 miles, a joint use by the Southern Pacific of main tracks on the river bank with either the Salt Lake or the Santa Fe, or the construction of its own main tracks on one side or the other along the river bank. The main tracks of the Salt Lake must be extended across the Los An-

geles river on a viaduct to the area selected for the union station. The main track of the Santa Fe runs along the river side of the selected area, but an extension of its main tracks will have to be made to bring it into the new station."

Appellants point to Commission's Exhibit 6 (R. p. 227) in support of their contention that the State Commission order requires joint use of main-line tracks and main-line connections. This exhibit is not a part of the Commission order and obviously the railroads are not required to connect their main-line tracks as suggested in said exhibit. The requirement of the Commission order is that the railroads construct and operate a station in substantial compliance with Commission Exhibit 4-b. (R. p. 267.)

III.

THE CERTIFICATES ISSUED IN THE ORDER OF THE INTERSTATE COMMERCE COMMISSION ARE LAWFUL. THE QUESTION OF THE LAWFULNESS OF SAID CERTIFICATES WAS NOT DETERMINED BY THE STATE COURT NOR PROPERLY PRESENTED TO SAID COURT FOR DETERMINATION.

A. The Certificates Issued in the Order of the Interstate Commerce Commission Are Lawful.

Under Point II of their brief (pp. 61-71) appellants urge that the order of the Interstate Commerce Commission granting the certificates is void inasmuch as it was issued upon the petition of the State Commission and the City of Los Angeles and not upon the petition of the railroads.

The order of the State Commission, as above noted, provided that it should

"become effective from and after the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates or other appropriate order or orders covering and authorizing the construction, extensions and abandonments herein authorized or directed, it being the intent of this Commission that the issuance of such certificates or other order or orders on the part of the Interstate Commerce Commission shall be and constitute a condition precedent to the effectiveness of the said order of this Commission." (R. p. 134.)

Pursuant to the instructions in the State Commission order, its attorney filed a petition with the Federal Commission asking for the issuance of such order. In this regard the *Second Federal Commission Decision, supra*, p. 493 (R. p. 142) states:

"The California State Commission has filed with us its petition for final order * * *. The petition of the City of Los Angeles for the issuance of certificates and the making of final order is somewhat more extensive than the petition of the California State Commission, but the relief sought is the same."

and the report further shows that the Railroads filed answers to both petitions, hearings were had and on stipulation of counsel the testimony taken before the State Commission was received in evidence. (R. p. 143.) Thereafter the Commission issued its certificate and order. (R. pp. 153, 154.)

There are no words of limitation to be found in Paragraphs 18-20 of Section 1 of the Interstate Commerce Act which indicate that the jurisdiction of the Commission to act thereunder is limited to cases where the Railroads are the applicants. The language of the para-

graphs is broad and confers general jurisdiction on the Commission to issue the certificates upon application.

In the proceedings in question the Interstate Commerce Commission could also properly act under Paragraph 21 of Section 1, the proceeding on the part of the City of Los Angeles having been in the form of a complaint. (R. p. 135.) Paragraph 21 of Section 1 provides that the Commission may act thereunder "upon complaint or upon its own initiative."

Furthermore, we believe that the decisions of this Court in *First Los Angeles Case, supra,* and *Second Los Angeles Case, supra,* are definite authorities in support of the validity of the certificates. This Court in *First Los Angeles Case, supra,* knowing full well that the City of Los Angeles was before the Commission in an *adversary* proceeding, pointed out with much care and detail the authority of the Interstate Commerce Commission to issue the certificates prayed for. We believe it unreasonable to assume that this Court would have taken the pains to make its analysis on this subject if in fact no such power existed in such case. That the Court fully understood the situation appears from the last two paragraphs of said decision (pp. 347-348):

> "We were advised by statements at the bar after the California supreme court handed down its decision in this case, the city of Los Angeles filed a petition with the Interstate Commerce Commission, asking for an order to provide, maintain, and use a union station; that a hearing followed, and that, pending the decision in this court, the matter is held under consideration.
>
> "For the reasons given, we think the course taken by the city of Los Angeles was the correct one. Until

> the Interstate Commerce Commission shall have acted under Paragraphs 18 to 21 of Section 402 of the Transportation Act, the respondent railways cannot be required to provide a new interstate union station, and to extend their main tracks thereto, as ordered by the State Railroad Commission."

Then, again, in *Second Los Angeles Case, supra,* this Court had before it not merely the entire complaint of the City of Los Angeles before the Interstate Commerce Commission, but also both decisions of the Interstate Commerce Commission and other pertinent records. Being fully informed of the nature of the proceeding which the City of Los Angeles had brought before the Interstate Commerce Commission and after a second review of the situation, this Court explained its first decision as holding

> "until the Interstate Commerce Commission had acted under those paragraphs the carriers could not be *required* to provide a new union station or to extend their main-line tracks thereto *as ordered by the State Railroad Commission.*" (p. 61.)

In the matter of findings and certificates the Interstate Commerce Commission acted in exact accord with the two decisions of this Court in this matter.

B. The Question of the Lawfulness of Said Certificates Was Not Determined By the State Court Nor Properly Presented to Said Court For Determination.

The Railroads did not seek to challenge the validity of the order of the Interstate Commerce Commission granting the certificates in question, as they might properly have done under Judicial Code, Sections 212, 213,

as amended, 28 U. S. C. 45a. (See also 28 U. S. C. 45, 46, 47.) No petition for rehearing was filed with the Interstate Commerce Commission nor was any action filed in the United States District Court challenging the validity of the order. It is well established that any party to a proceeding before the Interstate Commerce Commission is a proper party to initiate proceedings in the United States District Court under the Urgent Deficiencies Act (28 U. S. C. 45a) to set aside an order of the Commission. The fact that the order is permissive does not preclude review if by that term is meant an order which, in contradistinction to one compelling performance, authorizes a carrier to do some act otherwise prohibited.

B. & O. R. Co. v. United States (Chicago Junction Case) (1924), 264 U. S. 258, 264;

Chesapeake & O. R. Co. v. United States, ___ U. S. ___ (not yet officially reported, see Oct. 1930, Term, No. 73, Advance Opinions, 75 L. ed. 445);

Colorado v. United States (1926), 271 U. S. 153, 161;

Texas v. United States (1922), 258 U. S. 204;

Piedmont & N. O. Co. v. United States (1930), 280 U. S. 469, 478.

In *Baltimore & Ohio R. Co. v. United States, supra*, the Interstate Commerce Commission on application of the New York Central Railroad under Paragraph 18, Section 1, and Paragraph 2 of Section 5 of the Act to Regulate Commerce, as amended by the Transportation Act, authorized the acquisition of certain independent belt line railroads serving Chicago. The permissive order was issued over the protest of plaintiff railroads who had intervened in the proceeding before the Interstate Com-

merce Commission. This Court in reversing a decree of the District Court dismissing plaintiffs' bill held:

"The defendants * * * insist that the plaintiffs have no interests which entitle them to assail the order. (p. 262.)

"Nor would the further fact that the order is permissive preclude review if by that term is meant an order which, in contradistinction to one compelling performance, authorizes a carrier to do some act otherwise prohibited. Orders entered under the Act of June 18, 1910, chap. 309, 36 Stat. at L. 539, 547, Comp. Stat. Paragraph 8566, 4 Fed. Stat. Anno. 2d ed. p. 396, amending Paragraph 4 of the Interstate Commerce Act, are of this character. That section prohibits carriers from charging more 'for a shorter than for a longer distance over the same line or route in the same direction' without obtaining authority from the Commission. A suit will lie to set aside an order granting such authority, and to enjoin action by the carrier thereunder. *Skinner & E. Corp. v. United States,* 249 U. S. 557, 562, 63 L. ed. 772, 776, 39 Sup. Ct. Rep. 375. Compare *United States v. Merchants & Mfrs. Traffic Asso.,* 242 U. S. 178, 61 L. ed. 233, 37 Sup. Ct. Rep. 24." (pp. 263, 264.)

"The plaintiffs may challenge the order because they are parties to it. The Judicial Code, Sec. 212 (originally the Commerce Court Act, June 18, 1910, chap. 309, 36 Stat. at L. 542, Comp. Stat. Sec. 1005), declares that any party to a proceeding before the Commission may, as of right, become a party to 'any suit wherein is involved the validity of such order.' The section does not in terms provide that such party may institute a suit to challenge the order. But this is implied. For, otherwise, there would in some cases be no redress for the injury inflicted by an illegal order. Moreover, the fact of intervention,

allowed as it was, implies a finding by the Commission that the plaintiffs have an interest." (pp. 267, 268.)

We thus find that the Railroads failed to directly challenge the validity of the Federal Commission order in this matter as they might have done. Their attempt to collaterally attack the order of the State Court was obviously improper and that Court was not obliged to pass upon the lawfulness of said order.

Upon the question of the sufficiency of the certificates issued by the Federal Commission the State Court said:

"As a last attack upon the order, the carriers contend it is conditional and not absolute, indefinite and uncertain. It is contended that because the order recites that it shall become effective upon the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates or orders covering and authorizing the constructions, extensions and abandonments authorized in said order of the Railroad Commission, and that the issuance of such order or orders by the Interstate Commerce Commission shall be a condition precedent to the effectiveness of the order of the Railroad Commission, the order is void for uncertainty. Petitioners ask who is to say whether or not such certificates as might be made by the Interstate Commerce Commission are 'proper and sufficient certificates.' We think this question is not properly raised here. The certificates on their face are proper and sufficient and comply with the decision of the Supreme Court of the United States; the Railroad Commission is so considering them, as did the Interstate Commerce Commission. No question has been raised by anyone as to their insufficiency and since they had been issued and were in existence and be-

came a part of the order of the Railroad Commission at the time the writ of review was issued by this court, no uncertainty existed at such time as to their content and no dispute existed as to their sufficiency." (*Third State Commission Decision, supra.*) (R. pp. 197, 198.)

Appellants in their brief (p. 63) submit that they "could not by injunction or otherwise correct the Commission's action because it was not mandatory," citing *United States v. L. A. & S. L. Ry. Co.* (1927), 273 U. S. 299. In that decision (p. 310) it was held that the report of the Interstate Commerce Commission there under attack (report fixing value of railroad properties under Section 19a of the Interstate Commerce Act) was one "which does not command the carrier to do or refrain from doing anything; which does not grant or withhold any authority, privilege or license; * * * which does not determine any right or obligation" and therefore one not judicially reviewable under the Urgent Deficiencies Act. (October 22, 1913, Ch. 32, 32 Stats. at L. 208, 219; 28 U. S. C. 45a.)

It is obvious that the order of the Interstate Commerce Commission herein granting certificates and authorizing the proposed construction and abandonments (R. pp. 153, 154) is not an order of the type discussed in *United States v. L. A. & S. L. R. Co., supra,* but rather one which authorizes the Railroads to do acts otherwise prohibited, and therefore is an order properly reviewable under the rule of *B. & O. R. R. Co. v. United States, supra.*

IV.

THE STATE COMMISSION ORDER IS A REASONABLE EXERCISE OF THE POLICE POWER AND DOES NOT DEPRIVE THE RAILROADS OF THEIR PROPERTY WITHOUT DUE PROCESS OF LAW OR DENY THEM THE EQUAL PROTECTION OF THE LAWS OR TAKE THEIR PROPERTY FOR PUBLIC USE WITHOUT JUST COMPENSATION, IN CONTRAVENTION OF THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

The Railroads under Points III and IV of their brief (pp. 72-117) contend that the State Commission order is violative of their rights under the Fourteenth Amendment to the Constitution of the United States inasmuch as it requires them to abandon their present station sites and facilities, extend their main-line tracks and dedicate new properties to public use.

These contentions are not new in union station cases and many state courts have passed upon such questions contrary to the contentions of the Railroads. If the order in a particular case is reasonable, it must be upheld as a proper exercise of the police power of the state.

Before developing the authorities in detail, we will immediately challenge certain statements of fact and claims appearing in appellants' brief, page 72, preceding their argument to the effect that the State Commission order violates their constitutional rights under the Fourteenth Amendment. The following claims warrant comment:

(1) The statement of appellants that their present terminal stations are adequate is not in accordance with the facts. The record shows that they are in fact inadequate. This point will be developed in this brief, *infra*, pages 70-82.

(2) The only portions of their main lines of railroad which appellants would be required to abandon would be a small mileage in connection with track rearrangements in the Los Angeles terminal necessary and incidental in connection with the construction and operation of the union passenger station. The trackage of Southern Pacific on Alameda Street would be retained for industrial freight switching.

(3) The claim of the Railroads that the Commission order requires them "to extend their main lines of railroad to reach territory which they have not heretofore undertaken to serve" is contrary to the facts, as appears from examination of Commission Exhibit 5. (R. p. 226.) The present passenger stations of the carriers are located within the same section of the City of Los Angeles as is the Plaza site of the proposed union passenger terminal and in close proximity thereto.

(4) The Railroads are in error in contending that the State Commission order requires the "joint use by one or more of the Railroads of facilities owned by the others." This contention is answered in detail in this brief, *infra*, pages 93-96.

(5) While the improvements ordered by the Railroad Commission require a total investment in passenger terminal facilities of approximately ten million dollars, the net new money cost of the facilities as ordered will be less than the carriers would immediately expend under their own plan for the improvement of their passenger terminal facilities. The cost of the carriers' plan as compared with the cost of facilities under the State Commission order is developed hereinafter in this brief, pages 89-92.

(6) The appellants are in error in stating that any of their property will be taken or used without compensation first ascertained and paid. This point is answered in detail hereinafter at pages 93-96.

A. In the Exercise of the Police Power Public Authority May Properly Require the Construction and Operation of Union Passenger Stations So Long as the Particular Order is Reasonable.

The decisions of the courts are unanimously to the effect that, when public convenience and necessity would be served thereby, an order requiring two or more railroads to construct and maintain a union passenger depot does not violate any of the carriers' rights under the Fourteenth Amendment to the Federal Constitution.

In *Railroad Commission of Alabama v. Northern Alabama Railway Co.*, 182 Ala. 357, 62 So. 749, the Railroad Commission of Alabama had ordered three railroad companies to construct a union passenger station in Jasper, Alabama, upon a site selected by the Commission. The railroad companies were ordered to acquire said site by purchase or condemnation. Complainant alleged that it had its own depot and had already arranged to construct a new and larger depot upon its own site. It averred that the Commission's order was unreasonable and arbitrary and deprived complainant of its property without due process of law in violation of the Constitutions of Alabama and the United States. The Court held, however, that the Railroad Commission's order, made in the exercise of the state's police power, did not violate any provisions of the State or Federal Constitutions, "notwithstanding the railroad may lose the use of the old building or the use of the lot as a location for its passenger depot." On this point the Court said:

"It acquired the lot and erected the building with a full knowledge of and subject to the police power of the state." (p. 752 of the Reporter.)

In *Railroad Commission of Alabama v. Alabama Great Southern R. Co.*, 185 Ala. 354, 64 So. 13, the Railroad Commission of Alabama ordered five railroads to secure sufficient grounds within a specified territory in the City of Bessemer for a union passenger station and to erect such a station thereon. The railroads having failed to submit plans for the site of the passenger depot or to agree on the apportionment of the expense, the Commission issued a supplemental order fixing the location of the depot, apportioning the cost thereof and directing the railroads to acquire the site by purchase or condemnation. The Railroad Commission's orders were held valid, and on page 16 of the Reporter, the Court said:

"Unless the contrary is clearly shown, we will presume not only that the place prescribed is suitable, but that sufficient ground can be obtained, either by private purchase or by condemnation proceedings, at reasonable figures, for such station. Through the power of eminent domain which the law has conferred upon the railroad companies, they possess all the power which is necessary to acquire the needed lands at their fair value, and, under the present state of the record, we must presume that the Railroad Commission has placed no unreasonable burden upon the railroad companies in so far as the acquisition of the needed ground for the station is concerned."

At page 18 of the Reporter, the Court continued:

"It would, however, create a strange anomaly for the courts to hold that a state has the authority to

require all railroad companies operating railroads within a city, whenever the reasonable needs of the traveling public are such as to demand a union passenger station at that point, to use a union passenger station in said city, and at the same time deny to the state the power to require such companies to jointly acquire, by purchase or by condemnation proceedings, sufficient land upon which to maintain the building and to jointly construct the necessary building. The two positions are inconsistent and cannot co-exist. *If the state has the power to which we have referred, and that power seems to be conceded, then it has the corresponding authority to put that power into exercise.*"

The Railroads criticise this decision (Brief of Appellants, p. 83) by contending that "the power of the state to compel all railroads entering a given city to use a union station was conceded." Examination of the opinion of the Court, however, shows that the following decisions were made in overruling the contentions of the railroads: (1) That the state in the exercise of the police power may require several railroad companies to acquire, either by purchase or by condemnation proceedings, new land for a union passenger station (64 So. 13, 15-16); (2) that an order for the construction and operation of a union passenger station is not void because it directs the railroads to abandon their present occupied and used separate depots and depot facilities (64 So. 13, 16); and (3) that the several railroads may be jointly directed to purchase or condemn the new land for the union passenger station. (64 So. 13, 18.)

In *Mayor and Aldermen of Worcester et al. v. Norwich and Worcester Railroad Company et al.*, 109 Mass. 103, a

statute of Massachusetts provided that five railroad companies should unite in a union passenger station in Worcester; that commissioners should select the site as between two sites named in the statute; that one of the railroads should erect the station with power to condemn, the other railroads paying rent; that after the completion of the station two specified railroads should "respectively discontinue the present locations of their railroads in portions of the City of Worcester;" that all the railroad companies might and should unite in the location and construction of one or more railroad tracks for their joint use, and that the railroads might each purchase or take such lands as might be necessary for their purposes.

The objecting railroads urged, among other matters, that to extend their railroads to the union station "would require the taking of much land from private persons for the location of the extensions through densely settled portions of a populous city;" that the construction of the tracks would involve great expenditures; that one track extension would have a length of over one mile; that some of the railroads would be required to discontinue without compensation valuable portions of their present locations; and that public convenience and necessity would not be served by the changes ordered by the statute.

The Supreme Judicial Court of Massachusetts held that the statute was a reasonable exercise of the right to alter, amend or repeal corporate charters, reserved to the legislature and (at p. 113) said:

> "It is no valid objection to such amendments that they require corporations to extend their tracks, and to exercise the right of eminent domain for this purpose and to incur additional expense. The power to extend their tracks is often granted at their own

request, and is granted with no less propriety when the interests of the public require it."

In *Dewey v. Atlantic Coast Line et al.*, 142 N. C. 392, 55 S. E. 292, a number of citizens of Goldsboro, N. C., brought an action against three railroad companies to prevent obedience by them of an order of the Corporation Commission of North Carolina requiring the railroad companies to construct a union passenger depot in a specified site somewhat removed from the site of the existing depot. In upholding the statute under which the Corporation Commission acted and also the Commission's order, the Court (at p. 294 of the Reporter) said that the power of the legislature to enact such statutes has been established by numerous well-considered cases. The Court also drew attention to the fact that the railroads might use the power of eminent domain to acquire such new properties as might be necessary to enable them to carry out the Commission's order. (p. 295.)

The Railroads criticise this decision (Brief of Appellants, pp. 83-84) by drawing attention to the fact that the action arose at the suit of third parties, namely, property owners, to enjoin the railroad companies from carrying out the Commission's order. The decision shows, however, that the petitioning third parties raised the question of the authority of the legislature to enact a statute conferring union passenger station powers on the Corporation Commission, and we submit that the decision on that issue is as authoritative and significant as would have been the case had the action been instituted by the railroad companies. The Court held: (1) that the power of the legislature to enact such statute has been established by numerous well-considered cases (55 S. E. 292,

294); and (2) that the power of the state to act is not limited to a case in which the railroads already own the site and the right of way leading thereto. If additional property is necessary, it can be acquired by the railroads under the power of eminent domain. (55 S. E. 292-295.)

The decision in the *Dewey Case* was reaffirmed in *Griffin v. Southern Railway Co.*, 150 N. C. 312, 64 S. E. 16, and in *Corporation Commission v. Seaboard Air Line Railway Company*, 161 N. C. 270, 76 S. E. 554.

In *Missouri, O. & G. Railway Co. v. State*, 29 Okl. 640, 119 Pac. 117, it appeared that the Corporation Commission of Oklahoma had made an order directing the Missouri, O. & G. Railway Company and two other railroad companies to erect and maintain a union passenger depot in Durant, Oklahoma, at a designated site. Appellant urged that the Commission's order would compel it to abandon a right of way and station grounds theretofore acquired by it; that it would lose a bonus of $10,000 which citizens of Durant had subscribed for the erection of a passenger station on said station grounds; that the Commission's order would require appellant to acquire a new right of way through private property; that it would necessitate an expenditure by appellant of not less than $50,000; and that the order violated appellant's rights under the Constitution of the United States. In ruling against these contentions, the Court, at page 121 of the Reporter, held that the Commission's order might be sustained either under the reserved power to amend, alter or repeal the charters of corporations, "or on the ground, as stated by Judge Brewer in *State v. Kansas City, etc. Ry. Co.*, 32 Fed. 722, that the same is a valid exercise of the police power of the state."

The Railroads criticize this case (Brief of Appellants, p. 87) on the ground that "that case was decided upon the authority of the *Massachusetts Case* of *Mayor v. Norwich, etc., supra;* which, as we have shown, is contrary to the decisions of the Supreme Court of California and of this Court." There are two obvious answers to this contention: (1) The Railroads have not shown that the Massachusetts decision is contrary to the decisions either of the Supreme Court of California or of this Court. In fact this Court expressly cited the *Massachusetts Case* in *Wisconsin, M. & P. R. v. Jacobson,* 179 U. S. 287, 302; (2) The decision in the *Oklahoma Case* was rested not only upon the *Massachusetts Case* but also expressly "on the ground, as stated by Judge Brewer in *State v. Kansas City, etc. Ry. Co.,* 32 Fed. 722, that the same is a valid exercise of the police power of the state."

In *State v. St. Louis Southwestern Railway Co. et al.* (Tex. Civ. App.), 165 S. W. 491, the State of Texas asked that a writ of mandamus issue to enforce an order of the Railroad Commission of Texas directing two railroad companies to erect and maintain a union station at Hillsboro, Texas. Judgment for the defendants was reversed and the case remanded for a new trial on issues of fact. At page 498 of the Reporter, the Court said:

> "We have no doubt as to the constitutionality of the law requiring railroads to build union depots at such places and of such character as the Railroad Commission shall find necessary for the accommodation of the public, when it shall also have found the other facts required by the statute, but, *if any doubt existed on the subject, it would be our duty to resolve it in favor of the statute.*"

Replying to the argument that the statute did not authorize the Railroad Commission to select the *site* of the proposed union depot, the Court said (p. 498):

> "The statute explicitly grants the Commission the power to require railroads to build union depots, and that carries with it, by necessary implication, every power necessary to the accomplishment of such object. *Courts ought not to resort to technicalities to override the clear import of a statute.*"

Answering the argument that the order of the Railroad Commission was void because it directed the construction of a union depot on a site owned by one of the railroads which refused to let in the others, the Court said (p. 498):

> "But this is immaterial, as said appellees have the right to acquire, by condemnation proceedings, such interest in said land as is necessary for their depot purposes under the order of the Commission."

The Railroads (Brief of Appellants, p. 84) refer to this decision lightly by saying "the question of the power of the state to compel a railroad to extend its lines in order to enter a union station does not appear to have been raised." This contention of the Railroads is obviously in error, as appears from the above quoted language from the decision.

In *Gulf, Colorado & Santa Fe Railway Company et al. v. State* (Tex. Civ. App.), 167 S. W. 192, the State of Texas brought an action against two railroad companies to compel obedience to an order of the Railroad Commission directing them to construct and maintain a union passenger station at Celeste, Texas. Judgment for the state was affirmed. At page 195 of the Reporter the Court said:

"It is urged by demurrer that the order was too vague and indefinite to be complied with, in that it did not designate the location of such depot, and failed to state the kind and character of building or structure required. We think it unquestionably true that the Commission under this statute had the right to determine for itself the location, as well as the character and kind of depot that should be erected; but *it was permissible, we think, for it to leave these matters of detail open to appellants,* for the reason that these questions might be best determined by them."

In the case cited the first points urged by the carriers were that the order of the Railroad Commission deprived them of their property without due process of law and denied to them the equal protection of the laws. Both points were overruled. (pp. 194-5.)

In *State v. St. Louis Southwestern Railway Co. et al.* (Tex. Civ. App.), 199 S. W. 829, the same general issues were involved as in 165 S. W. 491, *supra*. After the Railroad Commission of Texas made its order dividing the cost of the construction of a union passenger depot at Hillsboro between the railroad companies affected, the railroad companies refused to obey the order. Judgment for the railroad companies was now reversed by the Court of Civil Appeals, which itself entered judgment in favor of the state. The conclusions of law set forth in 165 S. W. 491 were reaffirmed. (p. 830.)

In *North Carolina Corp. Comm. v. Southern Railway Co.*, 185 N. C. 435, 117 S. E. 563, the Supreme Court of the State of North Carolina sustained an order of the Corporation Commission of that state requiring two railroad companies to erect, at a junction point, a union station ade-

quate to care for the traffic at that point. The Court said that the statute of North Carolina conferring the power in question upon the Commission is "a valid exercise of the legislative power, and being remedial will be liberally construed." Citing *Dewey v. Railroad, supra,* and *Griffin v. Railroad, supra.*

In *St. Louis S. W. Ry. Co. v. State,* 255 S. W. 390, the Commission of Appeals of Texas sustained an order of the Railroad Commission of that state requiring three railroads to construct a union station upon a particular site.

In *Chicago R. I. P. Ry. Co. v. State,* 90 Okl. 173, 217 Pac. 147, the Supreme Court of Oklahoma discussed the general question at length, and declared:

> "Prior to the passage of the Transportation Act of 1920, the power of the state, through its agency, the Corporation Commission, to require railroads to construct and maintain adequate depots, or, if necessary Union Depots, *was settled and established by a long line of decisions of this court,* both upon the theory (that) the same was a proper exercise of its police power, or of the right reserved to the Legislature to amend, alter, or repeal the charter of said railroad. See section 26, art. 9 of the Constitution of Oklahoma; sections 3459 and 3460, Comp. Laws 1921; *M. K. & T. Ry. Co. v. State,* 24 Okl. 331, 103 Pac. 613; *St. L. & S. F. R. Co. v. Sutton et al.,* 29 Okl. 553, 119 Pac. 423; *M. O. & G. Ry. Co. v. State,* 29 Okl. 640, 119 Pac. 117; *K. C. S. Ry. Co. v. Redwine,* 43 Okl. 610, 143 Pac. 847; *M. O. & G. Ry. Co. v. State,* 53 Okl. 341, 156 Pac. 1155; *Tulsa Street Railway Co. v. Okl. Union Railway Co.,* 76 Okl. 102, 184 Pac. 71. For other cases upon this point see *R. R. Commission of Alabama v. Alabama Great*

Southern Ry. Co., 185 Ala. 354, 64 South. 13, L. R. A. 1915D, 98; *State v. St. Louis S. W. Ry. Co.* (Tex. Civ. App.) 165 S. W. 491; *Dewey v. Atlantic Coast Line Ry.*, 142 N. C. 392, 55 S. E. 292; *St. Louis, I. M. & S. Ry. Co. v. Bellamy*, 113 Ark. 384, 169 S. W. 322, L. R. A. 1915D, 91. The case of R. R. Commission of Alabama v. Alabama Great Southern Ry. Co., supra, discussed the question of acquiring additional land and the fact the police power of the state extends to Union Passenger Depots."

The principal contentions of the Railroads in support of their argument that the order of the State Commission deprives them of rights guaranteed under the Fourteenth Amendment to the Federal Constitution may be summarized as follows: (1) the Railroads may not lawfully be required to abandon any of their existing passenger facilities; (2) the Railroads may not lawfully be required to acquire additional land by the exercise of the power of eminent domain; (3) the Railroads cannot lawfully be compelled to grant the use of any portion of their property to a rival railroad even though compensation be first paid; (4) no public authority can lawfully compel the Railroads to go to a new site within the same city and there erect a union passenger depot.

In connection with these detailed contentions made by the carriers under the score of deprivation of property without due process, we may classify the authorities as follows:

(1) Abandonment of Existing Passenger Stations and Other Facilities.

The following decisions hold that an order for the construction of a union passenger station, otherwise valid,

does not lose its validity because it contemplates the abandonment by one or more railroads of their existing passenger stations and other passenger facilities. Practically every order for the construction of a union passenger station involves the abandonment of one or more existing passenger stations adequate for that railroad alone.

Railroad Commission of Alabama v. Northern Alabama Ry. Co., 182 Ala. 357, 62 So. 749;

Railroad Commission of Alabama v. Alabama Great Southern Ry. Co., 185 Ala. 354, 362, 64 So. 13, 16;

State v. Jacksonville Terminal Co., 71 Fla. 295, 331, 71 So. 474, 484;

Mayor and Aldermen of Worcester v. Norwich and Worcester Ry. Co., 109 Mass. 103;

Missouri, O & G. Ry. Co. v. State, 29 Okl. 640, 119 Pac. 117;

Chicago, R. I. & Pac. Ry. Co. v. State, 90 Okl. 173, 217 Pac. 147;

State v. St. Louis Southwestern Ry. Co. (Tex. Civ. App.), 165 S. W. 491, 199 S. W. 829, 830.

(2) Acquisition of Additional Land By Eminent Domain.

The following decisions hold that the fact that compliance with an order for the construction of a union passenger station will require a railroad to acquire additional property by the exercise of the power of *eminent domain* does not militate against the validity of the order.

Railroad Commission of Alabama v. Northern Alabama Ry. Co., 182 Ala. 357, 62 So. 749;

Railroad Commission of Alabama v. Alabama Great Southern Ry. Co., 185 Ala. 354, 361, 64 So. 13, 15, 16;

Mayor and Aldermen of Worcester v. Norwich and Worcester Railroad Co., 109 Mass. 103;

Dewey v. Atlantic Coast Line, 142 N. C. 392, 53 S. W. 292;

State v. St. Louis Southwestern Ry. Co. (Tex. Civ. App.), 165 S. W. 491, 498, 199 S. W. 829, 830.

On this point, see also the following two cases, which are not union station cases:

Wisconsin, Minnesota and Pacific Railroad v. Jacobson, 179 U. S. 287, 302, 45 L. ed. 194, 201;

Denver & Rio Grande Railroad Co. v. City and County of Denver, 250 U. S. 241, 63 L. ed. 958.

(3) Use of Property of Rival Railroad.

The fact that compliance with an order for the construction of a union passenger station will require a railroad to acquire the right to use the property of a rival railroad will not make such order invalid. The public authorities may, under their police power, make such orders.

Railroad Commission of California v. Southern Pacific Company, 264 U. S. 331;

Mayor & Aldermen of Worcester v. Norwich & Worcester Rr. Co., 109 Mass. 103;

Missouri, O. & G. Ry. Co. v. State, 29 Okl. 640, 119 Pac. 117;

Chicago, R. I. & P. Ry. Co. v. State, 90 Okl. 173, 217 Pac. 147;

State v. St. Louis S. W. Ry. Co. (Tex. Civ. App.), 165 S. W. 491, 498, 199 S. W. 829, 830.

(4) Selection of New Site.

The fact that the public authority selects for the union passenger station a *new site* on lands of third parties does not make the order invalid. Public authority has just as much power to select as a site the lands of third parties as lands already in railroad ownership.

Railroad Commission of Alabama v. Northern Alabama Railway Co., 182 Ala. 357, 62 So. 749;
Railroad Commission of Alabama v. Alabama Great Southern R. Co., 185 Ala. 354, 64 So. 13;
Dewey v. Atlantic Coast Line R. Co.; 142 N. C. 392, 55 S. E. 292.

(Here the site is already largely in railroad ownership.)

(5) Additional Authorities.

In the following additional cases, the right of the public authorities to order the construction and operation of union passenger stations, where the facts showed such order to be reasonable, has been upheld.

State ex rel. Barton County v. Kansas City, Ft. S. & G. R. Co., 32 Fed. 722;
State ex rel. Railroad Commissioners v. Atlantic Coast Line R. Co., 67 Fla. 441, 63 So. 729;
Griffin v. Southern Ry. Co., 150 N. C. 312, 64 S. E. 16;
Corporation Commission v. Seaboard Air Line Ry. Co., 161 N. C. 270, 76 S. E. 555;
North Carolina Corporation Commission v. Southern Ry. Co., 185 N. C. 435, 117 S. E. 563;
Missouri, K. & T. Ry. Co. v. State, 38 Okl. 401, 133 Pac. 35;
Chicago, R. I. & P. Ry. Co. v. State, 90 Okl. 173, 217 Pac. 147.

B. Authorities Relied Upon By the State Court in the Decision Under Review Are Sound.

In the light of the numerous foregoing authorities the California Supreme Court correctly stated the law in its decision when it held:

> "It is also contended that the order, requiring, as it does, the acquisition and dedication to public use of new property necessary for the construction of a union station and the abandonment of adequate facilities, deprives the petitioners of their property without due process of law and takes their property for public use without compensation, contrary to the constitutional guarantees of the United States and of the state of California. That contention is not a new one, but has been passed upon by numerous state tribunals, contrary to the contention of the railroads herein, noticeably in the cases of *State ex rel. Railroad Commissioners v. Atlantic Coast Line R. Co. et al.*, 67 Fla. 441; *Griffin v. Southern Ry. Co.*, 150 N. C. 312; *State ex rel. Corporation Commission v. Seaboard Air Line et al.*, 161 N. C. 270; *State ex rel. Corporation Comm. v. Southern Ry. Co. et al.*, 185 N. C. 435; *Gulf, S. F. Ry. Co. v. State*, 167 S. W. 192; *Railroad Commission v. Northern Alabama Ry. Co.*, 182 Ala. 357; *Railroad Commission v. Alabama Great Southern R. R. Co.*, 185 Ala. 354; *Mayor, etc. v. N. & W. R. R. Co.*, 109 Mass. 130; *State v. St. L. S. Ry. Co.*, 165 S. W. 491; *W. M. & P. Co. v. Jacobson*, 179 U. S. 287.
>
> "The foregoing decisions also answer the contention of petitioners that the erection of a union station is a matter of business policy and management and not a proper subject for control under the police power of the state." (R. p. 195.)

The authorities relied upon in the above quotation have been cited and referred to with approval in connec-

tion with the same contentions under the Fourteenth Amendment by the following federal tribunals:

United States Supreme Court:

Second Los Angeles Case, supra (pp. 67-8), (Appendix to this Brief, p. 118);

Court of Appeals of the District of Columbia:

United States of America ex rel. City of Los Angeles v. Interstate Commerce Commission, 34 Fed. (2d) 228, 232;

Interstate Commerce Commission:

First Federal Commission Decision, supra (pp. 425-6), (Appendix to this Brief, p. 37).

C. The Authorities On Which the Railroads Rely Are Not in Point.

The Railroads (Brief for Appellants, pp. 73-82, 90-93), in support of their contention that the California Railroad Commission's order deprives them of rights under the Fourteenth Amendment to the Federal Constitution, cite and quote excerpts from numerous decisions including:

Northern Pacific v. North Dakota, 236 U. S. 585;

Oregon R. N. Co. v. Fairchild, 224 U. S. 510;

McNeill v. Southern Railway Co., 202 U. S. 543;

Pennsylvania Coal Co. v. Mahon, 260 U. S. 393;

Southern Bell Telephone Co. v. Town of Calhoun, 287 Fed. 381;

Oregon, Washington R. & N. Co. v. U. S. (D. C. of U. S. for District of Oregon, January 29, 1931);

Pacific Tel. & Tel. Co. v. Eshleman, 166 Cal. 640;

Atchison, Topeka & Santa Fe Railway Co. v. Railroad Commission, 173 Cal. 577;

and

Hollywood Chamber of Commerce v. Railroad Commission, 192 Cal. 307.

These cases cited and relied upon by appellants are not in any sense applicable in the instant case. They are all cases wherein the state statute or order under attack has been found to be unreasonable or unsupported by the evidence, or the attempted regulation has been outside the field of dedication to public use and, therefore, beyond proper bounds.

In the instant case the order of the State Commission is applicable to an existing public service being rendered by the Railroads and is reasonable and supported by the evidence. The Railroads admittedly have dedicated their properties to public use and have undertaken to provide transportation service to the City of Los Angeles and surrounding territory. If the passenger terminal facilities of said carriers in Los Angeles are inadequate, as the State Commission in effect has found, and if the public convenience and necessity require that they be made adequate through the construction and operation of a union passenger station, certainly the State Commission, in the exercise of the police power of the state, may properly require the construction and operation of such station. We will presently develop the facts of record to show that the order of the State Commission is reasonable and supported by the evidence, as found by the State Supreme Court.

Particular reference should be made to the three California Supreme Court decisions relied upon by appellants (i. e., the three cases last above cited):

In *Pacific Telephone & Telegraph Co. v. Eshleman*, 166 Cal. 640, the Supreme Court of California annulled an order of the State Commission directing the Pacific Telephone & Telegraph Company to construct a physical connection

between its lines and those of two independent telephone companies and to transmit telephone messages over its said lines. The Court held that the Pacific Company had never dedicated its property to such use by rival telephone companies and that for this reason the State Commission's order went beyond the police power and constituted a taking of property for which compensation must first be made. No such questions arise here. The Carriers have dedicated their property to an adequate passenger service in the City of Los Angeles and hence are subject to regulation of that service in the public interest under the police power.

In *Atchison, Topeka and Santa Fe Ry. Co. v. Railroad Commission,* 173 Cal. 577, this Court annulled an order of the Railroad Commission of California directing the Santa Fe to construct and operate a line of railroad between Oceanside in San Diego County and Temecula in Riverside County, California. The order could have been complied with either by constructing twelve miles of new railroad between Fallbrook and Temecula or by an alternative line of thirty-three miles of new construction between San Luis Rey and Temecula. The California Supreme Court held that the California Commission's order, contemplating the construction of a *new line of railroad* a number of miles in length *into territory not theretofore served by the railroad,* would require the dedication of the railroad's property to a new service (p. 582), and hence annulled the order. While conceding that a *railroad company "may be compelled to furnish proper stations for the reception and discharge of passengers and freight"* (p. 585), this Court held that what was required by the California Commission's order was that the Santa

Fe *"build a new line of road to tap or supply a territory which has not theretofore had the benefit of direct railroad service."* (p. 586.)

In *Hollywood Chamber of Commerce v. Railroad Commission,* 192 Cal. 307, the other California Supreme Court decision cited by the Carriers, the petitioner sought by writ of mandate to compel the Railroad Commission of California to hear and determine a complaint in which the California Commission was asked to direct the Los Angeles Railway Corporation to construct *ten and one-half miles* of double track railroad into Hollywood—*a territory which the railway corporation had never undertaken to serve.* Under well established principles, this Court denied the writ.

The facts of the above three cases are, of course, entirely different from the present situation, in which it appears that for many years the Carriers have held themselves out as serving the City of Los Angeles with adequate passenger service and where what is requested is *merely a relocation within the same general section of the same city passenger depot facilities, for the purpose of rendering more adequately and satisfactorily the very service which the Carriers have for many years undertaken to give to the public.*

The Railroads also rely on a separate concurring opinion of Chief Justice Shaw in the *First State Court Case, supra* (p. 228) in which he stated that in his opinion it is beyond the power of the Interstate Commerce Commission, as well as the Railroad Commission, to direct the construction of a union passenger station in Los Angeles, for the reason that it would be necessary for the Carriers to acquire new land for such station and to

build tracks thereto. In other words, Chief Justice Shaw held that on such facts all public authorities are helpless. This is an extreme view, which, we respectfully submit, was not the law when the Chief Justice wrote his concurring opinion, never has been the law and is not the law now. We invite attention to the following matters in connection with Chief Justice Shaw's separate opinion: (1) None of the other six Justices concurred in the views so expressed; (2) The language used does not have the force of decision (*Del Mar W. L. & P. Co. v. Eshleman*, 167 Cal. 666); (3) No other decision of the Supreme Court of California or any other Court, as far as we have been able to ascertain, supports the language of Chief Justice Shaw; and (4) Other union depot cases decided in the various states of the union are all at variance with the individual and personal views thus expressed.

It is significant to point out that in the proceedings before the California Supreme Court, from which the present appeal has been taken, the Railroads pressed the foregoing California decisions upon the Court, but the Court found that they were clearly inapplicable to the facts in the present case and affirmed the order of the State Commission.

The numerous authorities cited by the Railroads to the effect that they may not be required to extend their lines to serve new territory which they have not thertofore undertaken to serve, are obviously not applicable to the facts in the instant case. In this regard let us briefly refer to the record.

California Railroad Commission Exhibit 5 (R. p. 226), a map of the railroad and industrial district of Los Angeles, and the Plaza plan for a union passenger terminal

as ordered by the State Commission (Exhibit 4-b, R. p. 266), show the site of the proposed union station in relation to the existing tracks and passenger depots of the Carriers. As appears from Commission Exhibit 5, the Southern Pacific's main line from the north, the Santa Fe's main line from the north and the Salt Lake's branch line to Pasadena all pass under a single bridge or viaduct, over the Los Angeles River, known as the North Broadway viaduct, at the entrance of the city from the north. The two former lines are located under said viaduct along the west bank of the river and the latter line along the east bank. The point at which said tracks of said carriers run under the North Broadway viaduct is located only approximately three-quarters of a mile distant northerly from the site of the proposed union passenger terminal. Commission Exhibit 5 also shows that the Santa Fe's main-line tracks run directly across the site of the proposed union passenger terminal near the west bank of the river, the Southern Pacific's main-line tracks run across the site along Alameda Street and the Salt Lake's branch-line track lies along the east bank of the river, directly across the river from the site. The said exhibit also shows that the present passenger stations of the three railroads are located within the same section or portion of the industrial district of the city as the site of the proposed union passenger terminal, the Southern Pacific passenger depot being within approximately one mile of the proposed site, the Santa Fe depot and the Salt Lake former depot (now burned) being within approximately one-half mile of the proposed site.

We thus find that what the State Commission's order requires is merely a regulation in the public interest

under the police power of the passenger service which these railroads have for many years been performing by means of their tracks, trains and depots in this identical railroad and industrial district of the City of Los Angeles.

D. The Order of the Railroad Commission of California is a Reasonable Exercise of the Police Power.

Although the Railroads have devoted forty-four pages of their brief (Brief for Appellants, pp. 72-116) to argument that the order of the State Commission deprives them of property rights under the Fourteenth Amendment to the Federal Constitution, they have not challenged any of the ten specific findings of the State Commission (R. pp. 131-133) upon which the Commission's order is predicated. Indeed, the evidence before the Commission is not referred to except at pages 110 and 111 of their brief. We do not understand that the Railroads even suggest that the findings of the State Commission are not fully supported by the evidence, and we therefore find no necessity or occasion to point out in detail the testimony sustaining the said findings. However, in order that there may be no question in this regard and in order that the reasonableness of the Commission order may be apparent to this Court, we will briefly advert to salient portions of the record.

The California Supreme Court after reviewing the record made before the Railroad Commission held that "the findings of the Railroad Commission were made after full consideration and upon ample evidence," and that "there is nothing unreasonable or arbitrary in the findings and order made." (R. pp. 196, 197.) Upon the question of the reasonableness of the said Commission order the State Court held:

"The Southern Pacific Company, one of the petitioners here, contends that with relation to it the order is void because its necessary force and effect, as to said petitioner, is to require it to abandon adequate facilities and to join the other petitioners in acquiring new property which is unnecessary for a full performance of said petitioner's duties to the public. This argument is made because there has been no finding of fact made by the Railroad Commission of this state that the passenger station and facilities of the Southern Pacific Company was inadequate. There is, assuredly, an implied finding to this effect in the order of the Railroad Commission under review. The argument of the Southern Pacific Company that the evidence does not show that its passenger depot is inadequate, but, on the contrary, shows it to be adequate for some years to come, loses sight of the fact that an adequate building alone will not constitute adequate passenger terminal facilities, but that a satisfactory passenger terminal contemplates also that passenger trains may safely be directed to said terminal. The record discloses that passenger trains of the Southern Pacific Company can only reach its present passenger terminal by grade crossings along Alameda Street, which are so unsafe, impracticable and unreasonable, under all the surrounding circumstances, as to require elimination. The carriers admit the desirability of eliminating the grade crossings, and submitted a plan of their own. Both Commissions have found this plan undesirable and the application of the carrier to proceed in accordance therewith was denied by the Interstate Commerce Commission. Petitioners assert that they do not object to the elimination of grade crossings, but object to the method employed for accomplishing this. Extensive hearings were had upon this general problem and expensive investigations were made by en-

gineers and other experts and the findings of the Railroad Commission were made after full consideration and upon ample evidence.

"Unless the action of the State Commission is beyond its jurisdiction, its findings are binding upon us in this proceeding. (*Pac. Tel. & Tel. Co. v. Eshleman,* 166 Cal. 640.)

"It is contended by the petitioners, Atchison, Topeka and Santa Fe Railway Co. and Los Angeles and Salt Lake Railroad Co., that their property is being taken for public use without compensation and without due process of law because the necessary effect of the order under review is to require them to join in the construction of a union station; the primary purpose of which is to accomplish the removal of the tracks of the Southern Pacific Company from Alameda street, a matter with which they are unconcerned.

"The Railroad Commission, on the other hand, takes a position which we think is correct, to the effect that each company is ordered to join in the erection of the union station because of its own inadequacies in terminal passenger facilities; that the proportionate expense of each has not yet been determined, and that when it is determined, it is assumed that each carrier will be required to pay because of and in an amount proportionate to the evils in its system sought to be remedied by the new plan. It cannot be assumed that in the event they fail to agree upon a segregation of the costs, the Railroad Commission will require any of the carriers to pay more than the amount necessary to furnish proper facilities to perform its duty to the public.

"It is also contended, and we think with little merit, that the order of the Railroad Commission

is arbitrary because not warranted by the evidence introduced at the hearings. The evidence, indeed, the admitted facts, show that the station facilities of two of the carriers are inadequate, and that the grade crossings of the Southern Pacific, the third carrier, are dangerous to life and limb and unsuited to the surroundings. The latter matter could only be changed by a complete and expensive change of trackage or a change of terminal and the Commission adopted the latter method because of the need of a new terminal by the other two carriers. There is nothing unreasonable or arbitrary in the findings and order made." (R. pp. 195-197.)

An examination of the record discloses that the State Court was clearly warranted in holding the findings and order of the State Commission to be supported by ample evidence and reasonable in every particular.

(1) The Southern Pacific Passenger Terminal Facilities Are Inadequate.

In this regard, Richard Sachse, Chief Engineer of the California Railroad Commission testified:

"The question of whether there ought to be a union passenger terminal in Los Angeles regardless of location should be answered with a very decided 'yes.' We come to that conclusion for the reason that in Los Angeles the physical conditions are practically ideal and the railroad situation at this time is such that if ever a union depot is to be built, this is probably the time to build it. This is so because the existing facilities are inadequate, and a great deal of money has to be expended in the near future regardless of whether there is a union depot or not and regardless of where it is going to be built." (R. p. 221.)

"The recommendation that Commission's engineering department made was that all passenger railroad traffic and through freight traffic should be eliminated from Alameda Street so that there would be left only certain switching service which should be conducted at night. No feasible plan for meeting the Alameda Street situation has ever been presented which did not involve the construction of a union passenger station." (R. p. 259.)

"In Los Angeles the situation is ideal for the creation of a union station. The specific facts that apply to Los Angeles I have summarized, although they are stated in greater detail in Railroad Commission Exhibit No. 1. My summary is this: First, all of the three railroads are under the necessity, either immediately or in the near future, of making extensive improvements in passenger facilities. The Santa Fe is on record as admitting the immediate necessity of building new and adequate passenger station facilities. It is certain that these will cost in excess of $1,000,000. The utterly inadequate and inefficient and badly located passenger station of the Union Pacific was recently damaged by fire and has not been repaired or rebuilt, and this important railroad now uses, under a temporary permit, the Southern Pacific Arcade passenger station. An inspection of the latter station any day of the year in peak traffic hours will establish the fact that it either has actually reached its capacity or that the capacity will be reached in a very short time, and especially, as far as the convenience to the public is concerned; and if that is to be made, that, of course, means expenditure by both lines." (R. p. 260.)

"I testified before the Interstate Commerce Commission and also before this Commission and my opinion has not been changed that the Arcade site

is inadequate, certainly for a union station, and also for a joint station as is proposed by the two carriers, being too narrow for the necessary number of station tracks and insufficient room for adequate mail, express and baggage facilities as they will have to be provided for in the near future. Considering the possibilities for expansion present on that site, it is found that it will be a very expensive and very inconvenient proposition to expand the site and not in the interests of the city. It can be done by relocating Alameda Street or by building over or under the street or by doing the same thing on the Central Avenue side. Expansion north and south can be made by closing Fourth Street, or separating grades or elevating station tracks, all of which are undesirable and attended by expense that is not reflected in the estimates at present before the Commission." (R. pp. 261, 262.)

"The present Southern Pacific passenger station and incidental facilities are adequate for the Southern Pacific alone for the present time and for perhaps 20 years in the future. Irrespective of any grade crossing situation, considering the adequacy of the Southern Pacific station for its own use and the necessity of the Salt Lake and Santa Fe of providing themselves with station buildings, a union station at the Plaza would be recommended." (March 5, 1926.) (R. p. 265.)

A. G. Mott, Chief Engineer of the California Railroad Commission, testified:

"Based upon these studies I am of the opinion that for peak periods there is now no substantial margin of station track capacity at the Arcade Station, and that even with the additional two tracks that is proposed there will not be provided an adequate capacity

to take care of the joint operations of the Southern Pacific and the Salt Lake for a period of more than fifteen years. In making this estimate of fifteen years I am assuming that every possible operating efficiency will be taken advantage of. In my opinion there is no room at present for the Santa Fe in the Arcade Station, under present trackage and with the two additional tracks it would be inadequate right now for peak periods. There is no additional area in this particular site upon which I can see that additional tracks can be provided in any convenient way." (R. pp. 252, 253.)

* * * * * * *

"Frequent observation on my part indicates that there is a very definite tendency toward overcrowding the waiting room at this station between the hours of 7 and 8 p. m., just prior to the departure of such important trains as the Padre, Lark and Sunset Limited, and I am thoroughly convinced that, entirely aside from a theoretical consideration of station waiting room capacities, the present waiting room at the Arcade Station will prove to be entirely inadequate for the combined operations of the Southern Pacific and the Salt Lake for peak periods of travel within ten years. I do not see how the waiting room capacity at the Arcade Station could be increased except at a very large expense and at the sacrifice of necessary space for other incidental station facilities, such as baggage room and mail handling facilities, etc." (R. p. 253.)

The trains of the Southern Pacific now enter and leave the Southern Pacific Arcade Station at grade via Alameda Street, a principal north and south street running through the heart of the industrial district of Los Angeles. (Railroad Commission Exhibit No. 5, R. p. 227.) The uncon-

tradicted evidence demonstrates that the Alameda Street grade crossing situation is intolerable and must be remedied. Richard Sachse, Chief Engineer of the California Commission, testified:

> "All main line traffic should be diverted from Alameda Street, which will result in 97 per cent of all traffic now on Alameda Street being removed." (R. p. 221.)

> "The conclusion as to the Alameda Street situation was that it was intolerable and to the greatest possible extent steam traffic must be eliminated because it did not seem practicable to us to eliminate the tracks entirely. This problem was so very clearly tied up with passenger station situation that as far as Alameda Street is concerned, the two are inseparable. They are inseparable for the reason that the Southern Pacific passenger station is located on Alameda Street, and all passenger trains that are using that station and have used it, are using Alameda Street north of the station for the trains coming in northerly and going out northerly and south of the station coming in and out southerly. * * * The recommendation that Commission's engineering department made was that all passenger railroad traffic and through freight traffic should be eliminated from Alameda Street so that there would be left only certain switching service which should be conducted at night. No feasible plan for meeting the Alameda Street situation has ever been presented which did not involve the construction of a union passenger station." (R. p. 259.)

> "The most important of all reasons why a union station should be constructed at the Plaza is to eliminate the steam main line trains from Alameda Street. The other reasons which make it necessary.

to construct a union station at the Plaza are that the carriers are under the necessity of spending large sums of money for the improvement of passenger facilities aside from the question of Alameda Street, the physical conditions in Los Angeles, the topography, and also the conditions under which the steam railroads operate at present, are practically ideal for the establishment of the union station and a union station would more conveniently and adequately serve the passengers using the steam railroads as well as the general public that have occasion to use these steam railroad passenger depots, and the capital costs and operating costs would be less at a union station that under separate stations and a union station is a general consonance and fits in better with the city development of the civic plan. The property necessary to the erection of a union station is largely but not entirely railroad property. There is a very decided tendency of consolidation of terminals in large cities because the consolidation is recognized as a tremendous factor in railroad operation. These are some but not all of the reasons why I think a union station is desirable for Los Angeles." (R. pp. 264, 265.)

F. L. Burckhalter, First Assistant General Manager of the Southern Pacific Company, testified:

"The grade crossing situation is difficult; it is the most difficult situation of that kind anywhere in the West that I have ever seen or known of. It is a situation that has long been up for correction and the plans of the carriers afford a means of correction of this very bad grade crossing situation within a very short period of time. The public interest will be served in the carriers' plan by an expenditure on the part of the steam carriers for grade separation

of about $4,330,000. This expenditure would accomplish the elimination of 43 steam line railroad grade crossings, over which there are about four thousand train movements per day. From data in the record I conclude that Alameda Street, which is occupied by the Southern Pacific and in part by the Union Pacific for a distance of about four miles is crossed by about 125,000 vehicles per day. From intersecting streets there are about four thousand street cars crossing Alameda Street today. If we assume there are two people on an average in the vehicles and about twenty people on an average on the street cars, we find that some 330,000 people per day cross the steam railroad lines on Alameda Street. The existing steam line operations impose a tremendous interference to that cross traffic and impose a considerable interference to the traffic along Alameda Street. There are also a good many pedestrians crossing the street as well." (R. pp. 299, 300.)

It is, of course, true that an adequate building alone does not constitute adequate passenger facilities. This was pointed out by the California Supreme Court in the decision now under review (*Third State Court Case, supra*) (R. pp. 184-186):

> "a satisfactory passenger terminal contemplates also that passenger trains may safely be directed to said terminal * * *. The record discloses that passenger trains of the Southern Pacific Company can only reach its present passenger terminal by grade crossings along Alameda Street, which are so unsafe, impracticable and unreasonable, under all the circumstances, as to require elimination."

The Southern Pacific claims that there is no evidence in the records to show that its present passenger facilities

are in any respect inadequate and then argues that it is being directed to take action either to eliminate the dangerous grade crossing situation on and along Alameda Street or to help correct the existing passenger inadequacies of the Santa Fe and the Salt Lake. (Brief of Appellants, p. 109.) As we have shown above, this claim and argument are without merit.

In support of its argument the Southern Pacific relies on the statement of the California Railroad Commission that the Arcade depot thereafter to be erected would be ample to provide for the probable passenger traffic of a city several times "the present size" of Los Angeles, and on several statements in Exhibit 1 of the California Railroad Commission. (Brief of Appellants, pp. 109-111.)

In answer to these arguments of the Southern Pacific, it should be noted: (1) the City of Los Angeles has enjoyed phenomenal growth in population. The 1930 census shows a population of 1,238,048. The statement of the State Commission that the Arcade Depot to be erected would be ample to provide for passenger traffic for a city several times the present size of Los Angeles was made in 1913 (3 Opinions R. R. Comm. of Calif., p. 929) when the population of the city was less than 400,000. (California Commission Exhibit 56, R. p. 302.) The statement thus made in 1913 is now of no significance in view of the tremendous growth in population of Los Angeles; (2) the statements taken from Commission Exhibit 1 indicating that the Southern Pacific passenger station is adequate were made in 1919, since which time the population of Los Angeles has more than doubled (R. p. 235); (3) the more recent testimony outlined above shows that the Southern Pacific station building has actually reached its

capacity or that its capacity will be reached in the near future; and (4) the record discloses that passenger trains of the Southern Pacific Company can only reach its present station by grade crossings along Alameda Street, which are so unsafe and unreasonable under all the circumstances as to make the existing station site undesirable.

(2) The Atchison, Topeka & Santa Fe and Los Angeles and Salt Lake Passenger Terminal Facilities Are Inadequate.

Richard Sachse, Chief Engineer of the California Commission, testified:

> "* * * all of the three railroads are under the necessity, either immediately or in the near future, of making extensive improvements in passenger facilities. The Santa Fe is on record as admitting the immediate necessity of building new and adequate passenger station facilities. It is certain that these will cost in excess of $1,000,000. The utterly inadequate and inefficient and badly located passenger station of the Union Pacific was recently damaged by fire and has not been repaired or rebuilt, and this important railroad now uses, under a temporary permit, the Southern Pacific Arcade passenger station." (R. p. 260.).

The Santa Fe passenger depot in Los Angeles is antiquated and wholly inadequate for present and future needs. (California Commission Exhibit 1, pp. 90, 242-3, certified separately, R. pp. 7, 260.)

R. B. Ball, Chief Engineer of the Atchison, Topeka and Santa Fe Railway Company, Coast Lines, testified:

> "I have prepared a map showing the proposed track layout and tentative layout for a station at the Santa Fe site.

"I have made an estimate of the cost of the facilities shown on the map referred to so far as they require changes in existing facilities. The total cost of these facilities would be about $1,182,317. Against that figure there is a credit for salvage of $175,188. The net charge to capital account would be the difference of these two figures." (R. p. 228.)

See also Atchison, Topeka and Santa Fe Railway Company Exhibit No. 3. (Witness Ball; showing in detail the estimated cost of this proposed new station and incidental facilities. (R. pp. 229-230.))

The Salt Lake has no passenger depot of its own in Los Angeles and is using the Southern Pacific's Arcade depot as a temporary matter under permission of the Railroad Commission for the reason that the wooden depot of said company, formerly located east of the Los Angeles River, was damaged by fire. In order to reach the Arcade depot the Salt Lake operates all its passenger trains on and along Alameda Street from Butte Street on the south to the Arcade depot on the north at grade across many important streets. (California Commission Exhibit 5, R. p. 226.) These operations of the Sale Lake have greatly accentuated the inconvenience and danger to traffic, both vehicular and pedestrian, across said portion of Alameda Street. (*Third State Commission Decision, supra.*) (R. p. 128.)

F. H. Knickerbocker, General Manager of the Los Angeles and Salt Lake Railroad, testified:

"The Union Pacific has sufficient holdings on the east bank of the river to construct an adequate passenger terminal without acquiring any more property. The logical place would be at Seventh Street and an expenditure between $750,000.00 and

$1,000,000.00 would provide adequate facilities, which would take care of the Salt Lake for the next 10 or 15 years." (R. p. 279.)

(3) The Public, Convenience and Necessity Require the Establishment of a Union Passenger Terminal in the Plaza Area.

The California Commission on three occasions and the Interstate Commerce Commission on two occasions have found that public convenience and necessity require the establishment of a union passenger station in the Plaza area in Los Angeles.

First State Commission Decision, supra, pp. 776, 777, (R. pp. 75-77);

Second State Commission Decision, supra, pp. 944-946, (R. pp. 91-93);

Third State Commission Decision, supra, pp. 160-162, (R. pp. 131-133);

First Federal Commission Decision, supra, pp. 454-461, (Appendix to this brief, pp. 84-95);

Second Federal Commission Decision, supra, p. 496, (R. p. 145).

The Railroads do not contend that these findings, sustained by the California Supreme Court, lack support in the record. The findings are abundantly supported, and we will refer to the matter but briefly.

In 1917 the State Commission instructed its Chief Engineer, Richard Sachse, to conduct a thorough investigation into the Los Angeles grade crossing and terminal situation. The investigation was completed in 1919. Results of such investigation were embodied in the California Commission's Exhibit No. 1 introduced in evidence (R. p. 221) and transmitted to this Court as an original exhibit. (Praecipe Item 54(a), R. p. 7.) At page

13 of said exhibit appears the conclusion with reference to the establishment of a union passenger terminal:

> "After a most exhaustive consideration of all arguments for and against a union passenger station in Los Angeles, we have come to the conclusion that the establishment of such a station is desirable both from the standpoint of the public and from the standpoint of the railroads, that the cost is justified and that the project can be financed. The reasons for this conclusion are given in detail in the body of the report.
>
> "We have found three sites adapted to the location of such a station, viz., the Plaza site, the Santa Fe Station site and the Southern Pacific Station site. Detailed plans and estimates have been worked up by us for each of these locations, and the recommendations contained in the report have been fitted to each of the plans. Of the three plans, the Plaza plan is the best and it is our recommendation that the Commission order the establishment of a union passenger station at this site substantially in accordance with the plan we have developed."

Further support for the findings that public convenience and necessity require the construction of a union passenger station in the Plaza area is to be found in the testimony of the following witnesses:

Richard Sachse (R. pp. 221-222, 259-260, 262-264);

A. G. Mott (R. pp. 241, 256, 302).

(4) The Plaza Plan.

The Plaza plan for a union passenger station as ordered by the State Commission is shown in Commission Exhibit No. 4-b (R. p. 267) and described in detail by Commission witness G. S. Hill. (R. pp. 226-228, 266-269.)

The plan is a practicable, workable plan. (R. pp. 272-273.) The Plaza site selected for the station and incidental facilities is shown to be adequate to permit of future expansion and to meet the needs of Los Angeles for all reasonable time to come. (R. pp. 261-263, 303.) The site is shown to be more accessible to street car and vehicular traffic than the Southern Pacific Arcade station site. (R. pp. 255, 272.) The Plaza area is the geographical center of the metropolitan area of Los Angeles as well as the center of population of the same district. (R. p. 271.) It is also excellently located in relation to the future development of the rapid transit system of Los Angeles. (R. pp. 256, 303.) The location conforms to, and is in harmony with the civic plans of Los Angeles. (City of Los Angeles Exhibits Nos. 13, 14, 15, 16; R. pp. 270, 271, certified as original exhibits, Praecipe R. p. 8.)

A narrative description of the plan is set forth in an appendix to the *First Federal Commission Decision, supra*, p. 465. (See appendix to this brief, pp. 103-105.)

The Plaza site shown on Commission Exhibit No. 4-b comprises an area of approximately forty acres. This compares with the area of the Southern Pacific present site of sixteen acres. The area of the site now used by the Santa Fe for its passenger station is approximately eleven acres. (R. p. 303.) Approximately two-thirds of the entire lands required under the Plaza plan (Commission Exhibit No. 4-b) are now in the ownership of the Southern Pacific Company. (R. pp. 257, 297.)

(5) The Railroads' Proposal for Improving Their Passenger Terminal Facilities.

The Atchison, Topeka and Santa Fe Railway Company is on record as admitting the immediate necessity of

building a new passenger station and incidental facilities. (R. pp. 228-230, 260.) For this new construction the said carrier proposes to expend a total of $1,182,317 (R. p. 230) and would construct it on the location of its present station on the west bank of the Los Angeles River near First Street. (See California Commission Exhibit No. 5, R. p. 227.)

The Los Angeles and Salt Lake Railroad Company is without a station of its own, its station having been destroyed by fire. It is now using the Southern Pacific Arcade Station under a temporary permit. (R. p. 260.) The Southern Pacific Company and Los Angeles and Salt Lake Railroad Company desire to improve their passenger terminal facilities by making certain permanent improvements in the Arcade Station and its incidental facilities to be jointly used on a permanent basis. This plan is described in the record as the Southern Pacific-Salt Lake Plan, or Carriers' Plan.

Subsequent to the decision of this Court in the *First Los Angeles Case, supra,* the Southern Pacific Company and Los Angeles and Salt Lake Railroad Company filed with the Interstate Commerce Commission their joint application for certificates under Paragraphs 18-20 of Section 1 of the Interstate Commerce Act for authority to effect the construction and abandonments necessary to put into effect their proposed plan (Finance Docket Nos. 3556, 3569; Appendix to this brief, page 29, footnote.) These matters were heard jointly with the proceeding instituted against the Railroads by the City of Los Angeles (No. 14778) and decided jointly in the *First Federal Commission Decision, supra.* The Interstate Commerce Commission, after exhaustively reviewing the re-

spective plans, the Plaza Plan and the Southern Pacific-Salt Lake Plan, denied the applications of the carriers and issued its findings approving the Plaza Plan. (pp. 459-460.) (Appendix to this brief, pp. 92-95.) The Railroads' plan described in detail in Appendix No. 2 to the *First Federal Commission Decision, supra* (p. 466) is as follows:

> *"The Arcade Plan Proposed by Applicants.*
>
> The Arcade station site and depot building have been described in the report. Under applicants' plan all eight of the present station tracks save one would be stubbed at Fourth Street, the northern end of the yard, and four additional station tracks added. The tracks would range in capacity from 10 to 20 cars and would have an average capacity of 16 cars. The remaining track across Fourth street would furnish access to the railway-mail post office, the express yard, a plant of the Los Angeles Ice and Cold Storage Company, and would connect with the Alameda street tracks at Third street. As at present, access to trains would be by means of a subway under the station tracks, with ramps to the umbrella sheds and station building. From the south end of such sheds the station tracks would be gathered into the two-track throat near Sixth street. A spur from the east side of the yard would connect the throat with the Alameda street tracks. In order to secure a separation of grades, the station yard would be graded up on a 1 per cent grade from the present umbrella sheds toward the viaduct at the south end of the yard, and Sixth street and Alameda street would both be depressed five feet.
>
> "From the south end of the station yard the viaduct would extend across Sixth street on a 10° curve and turning eastward would cross Alameda street a short

distance south of its intersection with Sixth street. From thence it would continue east, south of and parallel to Sixth street, to the west bank of the river. The grade on the curved viaduct mentioned would be a compensated grade of 1 per cent. The viaducts would be ballasted deck structures on concrete pillars or columns, with 20-foot spans between streets and clear spans over principal street crossings. From the west bank of the river curved bridges would extend to the Salt Lake right of way across the river, one to the north and one to the south. From the north end of the northerly curved bridge the track would descend to grade. Connections would be provided with the Southern Pacific-El Paso line at Alhambra avenue and with its main line from the north on the east bank of the river north of the Arroyo Seco. The Salt Lake line to Pasadena and Glendale would have access to the station in similar manner. The southerly curved bridge would continue south along the east bank as an elevated structure, pass over Seventh street and reach grade near Ninth street. Connection with Alameda street and the Southern Pacific line from the south would be by means of the Butte street bridge reached by a curved track on the east bank. Salt Lake trains from the east and south would reach the station over the southerly curved bridge also. Under this plan only night switching of freight for industries would remain on Alameda street. The track along Alameda street would be cut near Sixth street and freight from the River station yard for industries on Alameda street south of Sixth street would move east on Alhambra avenue to the east bank of the river and thence to Alameda street by way of the Butte street bridge. The Southern Pacific intends, if the applications are granted, to relocate its coach yards

adjacent to its shop grounds on the east bank of the river south of Alhambra avenue. The Salt Lake will have its coach yards at Hobart."

First Federal Commission Decision, supra (Appendix to this brief pp. 105-107).

The Railroads' plan for joint station facilities for Southern Pacific Company and Los Angeles and Salt Lake Railroad Company at the Arcade site, in substantially the same form as outlined by the Interstate Commission in the *First Federal Commission Decision, supra*, was also presented to the California Railroad Commission for approval, and disapproved, and found not to be in the public interest in each of the three decisions of the State Commission. (*First State Commission Decision, supra* (R. pp. 24-84); *Second State Commission Decision, supra* (R. pp. 84-96); and *Third State Commission Decision, supra* (R. pp. 121-134).)

(6) The Estimated Cost of the Plaza Plan As Ordered By the State Commission is Less Than the Sum Proposed to Be Immediately Expended By Defendant Railroads For Separate Facilities.

Both the State Commission and the Interstate Commerce Commission have found that a union passenger terminal and incidental facilities can be constructed at the Plaza site in substantial compliance with the Plaza plan (Commission Exhibit No. 4-b) at a total cost of approximately $10,000,000 gross and approximately $5,500,000 net new money (*Third State Commission Decision, supra*, pp. 159, 162 (R. pp. 130, 133); *First Federal Commission Decision, supra*, p. 457 (Appendix to this brief, p. 89); *Second Federal Commission Decision, supra*, pp. 495, 496 (R. pp. 144, 145).)

These findings are fully supported by the record. A union passenger station and facilities which satisfactorily meet the requirements of the State Commission order can be constructed at a cost of $9,175,603. The salvage value of released real property is $3,453,000. The net new money cost is $5,722,603. (R. pp. 231, 232, 267, 301, 302.)

Under the Railroads' plan for separate facilities the Atchison, Topeka and Santa Fe Railway Company would construct a new passenger station and incidental facilities on its present site at a cost of $1,182,318 (R. p. 230) and the Southern Pacific Company and Los Angeles and Salt Lake Company would jointly expend $4,330,281 in new money for construction and land to carry out the Southern Pacific-Salt Lake plan for joint facilities at the Southern Pacific Arcade site. (R. pp. 296, 300.) Carriers' Exhibit No. 88 (R. p. 287) certified separately as an original exhibit (Praecipe Item 54(j) R. p. 8) shows in detail the cost of the Southern Pacific-Salt Lake plan. The first sheet thereof is a summary of the cost, and is as follows:

L. A. & S. L. R. R. & S. P. COMPANY
JOINT PASSENGER TERMINAL
LOS ANGELES, CALIFORNIA.

SUMMARY.

S. P. Co. Unit No. 1:		
Section A: Northerly double track bridge across L. A. River to 6th & Alameda Sts.	$1,739,771	
Section B: Fourth to Sixth Sts., Station yard	172,340	
Section C: Interlocking 6th & Alameda Street	165,862	
Total S. P. Unit	2,077,973	
S. P. Co. Unit No. 2:		
Double track connection from L. A. & S. L. R. R. to S. P. Co. Avenue 18 to Dayton Ave.	444,769	
S. P. Co. Alhambra Ave. Connections to L. A. & S. L. R. R.:		
North and South connections	85,953	
S. P. Co. Coach Yard	419,679	
Total S. P. Co.		$3,028,374
L. A. & S. L. R. R. Unit No. 1:		
Alhambra Ave. to connection south of 9th St.	1,208,835	
L. A. & S. L. R. R. Unit No. 2:		
Alhambra Avenue to Avenue 18	93,072	
Total Salt Lake Co.		1,301,907
Grand Total		$4,330,281

We thus find that under the Railroads' plan for separate passenger terminal facilities, they would immediately expend a total of $5,512,598 in new money, a sum in excess of the new money cost of joint terminal facilities at the Plaza which would meet with the require-

ments of the State Commission order. A comparison of the total investment in passenger terminal facilities under the Railroads' plan with the total investment under the Plaza plan of a union station shows that under the former $11,326,943 would be invested in Los Angeles passenger terminal facilities (R. p. 296), whereas, under the latter plan, the total investment would be approximately $10,000,000. (R. pp. 133, 231, 302.) From the standpoint of total investment, which must ultimately be sustained by the public, the Plaza plan is obviously preferable to the Railroads' plan for separate facilities.

In the *First Federal Commission Decision, supra,* pages 451, 456, 457, the Interstate Commerce Commission found that the total investment in passenger terminal facilities of the three Railroads would be less under the Plaza plan than under the Railroads' plan for separate facilities. (Appendix to this brief, pp. 78, 87-89.)

E. The Ruling of the California Supreme Court that the Findings and Order of the California Commission Are Reasonable and Supported By Ample Evidence Must Be Sustained.

In the light of the foregoing facts, it is apparent that the State Court was clearly correct in its decision in holding that "there is nothing unreasonable or arbitrary in the findings and order made," and that "the findings of the Railroad Commission were made after full consideration and upon ample evidence." (R. pp. 196, 197.)

It is respectfully submitted that the order of the Commission is reasonable in every particular and must be held to be a reasonable exercise of the police power of the State of California.

It is, of course, elementary that it is incumbent upon the railroads to draw to this Court's attention the por-

tions of the record which support their various claims of deprivation of property rights under the Fourteenth Amendment to the Federal Constitution. The burden of showing the order, on its facts, to be unreasonable and arbitrary is upon the appellant carriers. *New Orleans Public Service Inc. v. City of New Orleans,* 281 U. S. 682, 686. In this, we contend the railroads have utterly failed to make a showing. Indeed, in the entire brief of the railroads we find no references to the testimony of record other than the cursory references noted at pages 110 and 111 thereof.

F. The Appellants Are in Error in Urging that the State Commission's Order Requires the Joint Use of Any of Their Property Without Compensation First Paid.

The railroads at pages 94 to 103 of their brief contend that the Commission order requires the *joint use* by one or more carriers of existing tracks and other properties of other carriers and that the order is unlawful because it does not provide that compensation shall be paid to a carrier whose property is to be thus jointly used.

The answer to this contention is simply that the Railroad Commission order does not direct or require any joint use whatever of any existing carrier property. The Commission order (R. pp. 131, 133-134) contains not a word with reference to the joint use of any existing property. It is true that one of the Commission's findings (No. 6, R. p. 132) was that the use by any defendant carrier of so much of the terminal main-line track of any other defendant carrier "as may be incidental and necessary or convenient, to the proper operation of any such union passenger station" as defendants may construct pursuant to the Commission order, is in the public inter-

est. However, there is as yet nothing to show what joint use, if any, will be thus "incidental and necessary or convenient." It may well be that the carriers will not choose to operate jointly any tracks, but will rather construct separate tracks into the new terminal. This possibility was recognized in *First Los Angeles Case, supra* (p. 340), when this Court said

> "the changes to be effected under the order will require, in the abandonment of the Southern Pacific main line track on Alameda Street for three miles and joint use by the Southern Pacific of main tracks on the river bank with either the Salt Lake or the Santa Fe, or the construction of its own main tracks on one side or the other along the river bank. The main tracks of the Salt Lake must be extended across the Los Angeles River on a viaduct to the area selected for the Union Station. The main track of the Santa Fe runs along the river side of the selected area, but an extension of its main tracks will have to be made to bring it into the new station."

It must be assumed that the railroads will either agree upon such joint use of existing trackage as they may deem convenient or desirable (and agree upon the compensation for such use) or proceed to construct their separate tracks into the new station site and thus avoid joint use of existing trackage.

The State Court in its decision, in construing the Commission order, recognized the fact that said order gave to the railroads considerable discretion in working out the details of the arrangements incident to the construction and operation of the station. The Court said (R. p. 198):

> "As to the objection that the order under review does not specify the details of the construction of the

union station, we think it is without merit. A substantial compliance with the plans is all that is required, variation in detail being left to the discretion of the carriers * * *.

In the instant case, the location of the union station is given, the track lay-out is fully shown, the land necessary to be taken is definitely marked out and the general dimensions of the station building are given. As to the details of the arrangement, this is left, considerably, to the discretion of the carriers and, as we have stated, a substantial compliance with the suggested plan is all that is required."

In support of their contention that the State Commission order requires joint use of certain existing trackage, the railroads refer to Commission's Exhibit 6. (R. p. 227.) This exhibit is not a part of the Commission order and obviously the railroads are not required to connect their main-line tracks as suggested in said exhibit. The requirement of the Commission order is that the railroads construct and operate a station in substantial compliance with the Commission's Exhibit 4-b. (R. pp. 133, 267.)

With reference to the division of construction costs of the new union passenger station, it will be noted that Section 36 of the Public Utilities Act (set forth in the Appendix to this Brief, p. 13) gives to the Railroad Commission authority to determine in supplemental proceedings the division of joint costs of the affected utilities. The procedure outlined in said Section 36 may, of course, be invoked by the Commission in the event the railroads cannot agree upon the respective apportionment or division of construction costs. Although this matter is fully covered by Section 36, the State Commission, as a precautionary measure, expressly reserved in its order "the

right to make such further order or orders in these proceedings relating to * * * costs, division of costs, * * * as may be determined by the Commission to be just and reasonable * * *." (R. p. 134.)

G. In the Issuance of Its Order the Railroad Commission Has Not Acted Under the Guise of Exercising Its Police Power Over Grade Crossings.

Appellants in their brief, pages 103 to 112, refer to the language from earlier decisions of the State Commission and contend that in the issuance of the order now in question, the Commission acted pursuant to its authority to eliminate unsafe railroad grade crossings. This claim is without merit.

The only order of the State Commission now before this Court is the order in *Third State Commission Decision, supra.* (R. pp. 119-134.) This is a complete order differing in important particulars from previous orders and in no way dependent upon former findings or opinions of the State Commission.

The order now under review directs the carriers to construct and operate a union passenger station and its necessary incidents and, as above noted, is made pursuant to the Commission's authority over railroad passenger equipment and service and the safety of railroad passenger operations. The order in question does not require the separation of grades along Alameda Street or any other separation. It is true that the order provides (R. pp. 133-4) that after construction of a union passenger station, the operation by the Southern Pacific of its trains on and along Alameda Street, excepting industrial freight switching service, shall cease, but this is a result which

will follow automatically from the construction of the union passenger station.

The Southern Pacific also makes the point (Brief of Appellants, pp. 105-6) that the State Commission should have made an express finding that the existing passenger station facilities of said company are inadequate. In this regard it should be noted: (1) the existing passenger terminal facilities are in fact inadequate, as is shown by the record in this case and, in effect, was found by the Railroad Commission in its findings Nos. 7 and 10. (R. pp. 119, 132-3.) The State Supreme Court so construed the Commission's order (R. p. 196); (2) the finding required by Section 36 of the Public Utilities Act is not that the existing structure is *inadequate,* but that the "additions, extensions * * * or changes in the existing plant, equipment, apparatus, facilities or other physical properties * * * ought reasonably to be made, or that a new structure or structures should be erected to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities * * *." These specific findings were made by the State Commission. (Findings Nos. 3, 4, 5, 6, 7, 10, R. pp. 119, 131-133.)

H. The Order of the State Commission Does Not Require the Railroads, Or Any of Them, to Abandon Adequate Passenger Terminal Facilities, But is Directed at the Existing Inadequacies of the Passenger Terminal Facilities of Each of Said Railroads.

Appellants at pages 109-117 of their brief, under their Points IV(a) and IV(b), contend: (1) that the Southern Pacific is being directed to take action for the purpose of providing the Santa Fe and the Salt Lake with ade-

quate passenger depots and (2) that the Santa Fe and the Salt Lake are being directed to take action for the purpose of eliminating Southern Pacific's grade crossings on Alameda Street. These contentions are obviously unsound. The State Commission order, as appears from the face of the opinion and order, shows that each of the Railroads was directed to join in the construction of a new union passenger station because of its own inadequacies in passenger terminal facilities and because public convenience and necessity require the construction and operation of such station. The particular contentions of the carriers were presented to the State Court and found by that Court to be without merit.

Referring first to the Southern Pacific's situation, the State Court in *Second State Court Case, supra,* (R. pp. 184, 195-6) stated:

> "The Southern Pacific Company, one of the petitioners here, contends that with relation to it the order is void because its necessary force and effect, as to said petitioner, is to require it to abandon adequate facilities and to join the other petitioners in acquiring new property which is unnecessary for a full performance of said petitioner's duties to the public. This argument is made because there has been no finding of fact made by the Railroad Commission of this state that the passenger station and facilities of the Southern Pacific Company was inadequate. There is, assuredly, an implied finding to this effect in the order of the Railroad Commission under review. The argument of the Southern Pacific Company that the evidence does not show that its passenger depot is inadequate, but, on the contrary, shows it to be adequate for some years to come, loses sight

of the fact that an adequate building alone will not constitute adequate passenger terminal facilities, but that a satisfactory passenger terminal contemplates also that passenger trains may safely be directed to said terminal. The record discloses that passenger trains of the Southern Pacific Company can only reach its present passenger terminal by grade crossings along Alameda street, which are so unsafe, impracticable and unreasonable, under all the surrounding circumstances, as to require elimination. The carriers admit the desirability of eliminating the grade crossings, and submitted a plan of their own. Both Commissions have found this plan undesirable and the application of the carrier to proceed in accordance therewith was denied by the Interstate Commerce Commission. Petitioners assert that they do not object to the elimination of grade crossings, but object to the method employed for accomplishing this. Extensive hearings were had upon this general problem and expensive investigations were made by engineers and other experts and the findings of the Railroad Commission were made after full consideration and upon ample evidence."

Referring to the particular contentions of the Santa Fe and the Salt Lake, the Court continued (*Second State Case*, R. pp. 184, 196-7):

"It is contended by the petitioners, Atchison, Topeka and Santa Fe Railway Co. and Los Angeles and Salt Lake Railroad Co., that their property is being taken for public use without compensation and without due process of law because the necessary effect of the order under review is to require them to join in the construction of a union station, the primary purpose of which is to accomplish the re-

moval of the tracks of the Southern Pacific Company from Alameda street, a matter with which they are unconcerned. The Railroad Commission, on the other hand, takes a position which we think is correct, to the effect that each company is ordered to join in the erection of the union station because of its own inadequacies in terminal passenger facilities; that the proportionate expense of each has not yet been determined, and that when it is determined, it is assumed that each carrier will be required to pay because of and in an amount proportionate to the evils in its system sought to be remedied by the new plan. It cannot be assumed that in the event they fail to agree upon a segregation of the costs, the Railroad Commission will require any of the carriers to pay more than the amount necessary to furnish proper facilities to perform its duty to the public."

We will not burden the Court by again referring in detail to the portions of the record sustaining the State Court in upholding the Commission in its position "to the effect that each company is ordered to join in the erection of the union station because of its own inadequacies in terminal passenger facilities." We have referred in detail to the record in this regard hereinabove in this brief at pages 70-82.

CONCLUSION.

In conclusion, we respectfully submit that the points urged by the appellants are without merit and that the decision of the Supreme Court of California herein under review should be affirmed.

Dated, San Francisco, California,
April 8, 1931.

ARTHUR T. GEORGE,
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(Appendix Follows.)

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Appendix

PERTINENT PROVISIONS OF THE INTERSTATE COMMERCE ACT AS AMENDED BY THE TRANSPORTATION ACT, 1920.

(41 U. S. Stat. at Large, C. 91, pp. 476-478, Sec. 402, 49 U. S. C. A., Sec. 1, pars. (18) to (22), pars. (18) to (22) of Section 1 of Interstate Commerce Act.)

SEC. 402. The paragraphs added to section 1 of the Interstate Commerce Act by the Act entitled "An Act to amend an Act entitled 'An Act to regulate commerce,' as amended, in respect of car service, and for other purposes," approved May 29, 1917, are hereby amended to read as follows:

* * * * * * * * * *

"(18) After ninety days after this paragraph takes effect no carrier by railroad subject to this Act shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation under this Act over or by means of such additional or extended line of railroad, unless and until there shall first have been obtained from the Commission a certificate that the present or future public convenience and necessity require or will require the construction, or operation, or construction and operation, of such additional or extended line of railroad, and no carrier by railroad subject to this Act shall abandon all or any portion of a line of railroad, or the operation thereof, unless and until there shall first have been obtained from the Commission a certificate that the present or future

public convenience and necessity permit of such abandonment.

"(19) The application for and issuance of any such certificate shall be under such rules and regulations as to hearings and other matters as the Commission may from time to time prescribe, and the provisions of this Act shall apply to all such proceedings. Upon receipt of any application for such certificate the Commission shall cause notice thereof to be given to and a copy filed with the governor of each State in which such additional or extended line of railroad is proposed to be constructed or operated, or all or any portion of a line of railroad, or the operation thereof, is proposed to be abandoned, with the right to be heard as hereinafter provided with respect to the hearing of complaints or the issuance of securities; and said notice shall also be published for three consecutive weeks in some newspaper of general circulation in each county in or through which said line of railroad is constructed or operates.

"(20) The Commission shall have power to issue such certificate as prayed for, or to refuse to issue it, or to issue it for a portion or portions of a line of railroad, or extension thereof, described in the application, or for the partial exercise only of such right or privilege, and may attach to the issuance of the certificate such terms and conditions as in its judgment the public convenience and necessity may require. From and after issuance of such certificate, and not before, the carrier by railroad may, without securing approval other than such certificate, comply with the terms and conditions contained in or attached to the issuance of such certificate and proceed with the construction, opera-

tion, or abandonment covered thereby. Any construction, operation, or abandonment contrary to the provisions of this paragraph or of paragraph (18) or (19) of this section may be enjoined by any court of competent jurisdiction at the suit of the United States, the Commission, any commission or regulating body of the State or States affected, or any party in interest; and any carrier which, or any director, officer, receiver, operating trustee, lessee, agent, or person, acting for or employed by such carrier, who knowingly authorizes, consents to, or permits any violation of the provisions of this paragraph or of paragraph (18) of this section, shall upon conviction thereof be punished by a fine of not more than $5,000 or by imprisonment for not more than three years, or both.

"(21) The Commission may, after hearing, in a proceeding upon complaint or upon its own initiative without complaint, authorize or require by order any carrier by railroad subject to this act, party to such proceeding, to provide itself with safe and adequate facilities for performing as a common carrier its car service as that term is used in this Act, and to extend its line or lines: *Provided*, That no such authorization or order shall be made unless the Commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension or facilities that the expense involved therein will not impair the ability of the carrier to perform its duty to the public. Any carrier subject to this Act which refuses or neglects to comply with any order of the Commission made in pursuance of this paragraph shall be liable to a penalty of $100 for each day during which such refusal or neglect

continues, which shall accrue to the United States and may be recovered in a civil action brought by the United States.

"(22) The authority of the Commission conferred by paragraphs (18) to (21), both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one State, or of street, suburban, or interurban electric railways, which are not operated as a part or parts of a general steam railroad system of transportation."

(41 U. S. Stat. at Large, C. 91, pp. 479-480, Sec. 405, 49 U. S. C. A.; Sec. 3, pars. (3) and (4), pars. (3) and (4) of Section 3 of Interstate Commerce Act.)

SEC. 405. * * * * * * *

The second paragraph of section 3 of the Interstate Commerce Act is hereby amended to read as follows:

"(3) All carriers, engaged in the transportation of passengers or property, subject to the provisions of this Act, shall, according to their respective powers, afford all reasonable, proper, and equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, and shall not discriminate in their rates, fares, and charges between such connecting lines, or unduly prejudice any such connecting line in the distribution of traffic that is not specifically routed by the shipper.

"(4) If the Commission finds it to be in the public interest and to be practicable, without substantially im-

pairing the ability of a carrier owning or entitled to the enjoyment of terminal facilities to handle its own business, it shall have power to require the use of any such terminal facilities, including mainline track or tracks, for a reasonable distance outside of such terminal, of any carrier, by another carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the Commission may fix as just and reasonable for the use so required, to be ascertained on the principle controlling compensation in condemnation proceedings. Such compensation shall be paid or adequately secured before the enjoyment of the use may be commenced. If under this paragraph the use of such terminal facilities of any carrier is required to be given to another carrier or other carriers, and the carrier whose terminal facilities are required to be so used is not satisfied with the terms fixed for such use, or if the amount of compensation so fixed is not duly and promptly paid, the carrier whose terminal facilities have thus been required to be given to another carrier or other carriers shall be entitled to recover, by suit or action against such other carrier or carriers, proper damages for any injuries sustained by it as the result of compliance with such requirement, or just compensation for such use, or both, as the case may be."

PERTINENT PROVISIONS OF THE CONSTITUTION OF THE STATE OF CALIFORNIA.

(Const. of Cal., Art. XII, Secs. 22 and 23.)

SEC. 22. There is hereby created a railroad commission which shall consist of five members and which shall be known as the railroad commission of the State of California. The commission shall be appointed by the governor from the state at large; *provided,* that the legislature, in its discretion, may divide the state into districts for the purpose of such appointments, said districts to be as nearly equal in population as practicable; *and provided, further,* that the three commissioners in office at the time this section takes effect shall serve out the term for which they were elected, and that two additional commissioners shall be appointed by the governor immediately after the adoption of this section, to hold office during the same term. Upon the expiration of said term, the term of office of each commissioner thereafter shall be six years, except the commissioners first appointed hereunder after such expiration, one of whom shall be appointed to hold office until January 1, 1917, two until January 1, 1919, and two until January 1, 1921. Whenever a vacancy in the office of commissioner shall occur the governor shall forthwith appoint a qualified person to fill the same for the unexpired term. Commissioners appointed for regular terms shall at the beginning of the term for which they are appointed, and those appointed to fill vacancies, shall, immediately upon their appointment, enter upon the duties of their offices. The legislature shall fix the salaries of the commissioners, but pending such action the salaries of the commissioners, their officers and employees shall remain

as now fixed by law. The legislature shall have the power, by a two-thirds vote of all members elected to each house, to remove any one or more of said commissioners from office for dereliction of duty or corruption or incompetency. All of said commissioners shall be qualified electors of this state, and no person in the employ of or holding any official relation to any person, firm or corporation, which said person, firm or corporation is subject to regulation by said railroad commission and no person owning stock or bonds of any such corporation or who is in any manner pecuniarily interested therein, shall be appointed to or hold the office of railroad commissioner. No vacancy in the commission shall impair the right of the remaining commissioners to exercise all the powers of the commission. The act of a majority of the commissioners when in session as a board shall be deemed to be the act of the commission; but any investigation, inquiry or hearing which the commission has power to undertake or to hold may be undertaken or held by or before any commissioner designated for the purpose by the commission, and every order made by a commissioner so designated, pursuant to such inquiry, investigation or hearing, when approved or confirmed by the commission ordered filed in its office shall be deemed to be the order of the commission.

Said commission shall have the power to establish rates of charges for the transportation of passengers and freight by railroads and other transportation companies, and no railroad or other transportation company shall charge or demand or collect or receive a greater or less or different compensation for such transportation of passengers or freight, or for any service in connection therewith, between

the points named in any tariff of rates, established by said commission, than the rates, fares and charges which are specified in such tariff. The commission shall have the further power to examine books, records and papers of all railroad and other transportation companies; to hear and determine complaints against railroad and other transportation companies; to issue subpoenas and all necessary process and send for persons and papers; and the commission and each of the commissioners shall have the power to administer oaths, take testimony and punish for contempt in the same manner and to the same extent as courts of record; the commission may prescribe a uniform system of accounts to be kept by all railroad and other transportation companies.

No provision of this constitution shall be construed as a limitation upon the authority of the legislature to confer upon the railroad commission additional powers of the same kind or different from those conferred herein which are not inconsistent with the powers conferred upon the railroad commission in this constitution, and the authority of the legislature to confer such additional powers is expressly declared to be plenary and unlimited by any provision of this constitution.

The provisions of this section shall not be construed to repeal in whole or in part any existing law not inconsistent herewith, and the "railroad commission act" of this state approved February 10, 1911, shall be construed with reference to this constitutional provision and any other constitutional provision becoming operative concurrently herewith. And the said act shall have the same force and effect as if the same had been passed after the adoption

of this provision of the constitution and of all other provisions adopted concurrently herewith, except that the three commissioners referred to in said act shall be held and construed to be the five commissioners provided for herein. (Amendment adopted October 10, 1911.)

SEC. 23. Every private corporation, and every individual or association of individuals, owning, operating, managing, or controlling any commercial railroad, interurban railroad, street railroad, canal, pipe line, plant, or equipment, or any part of such railroad, canal, pipe line, plant, or equipment within this state, for the transportation or conveyance of passengers, or express matter, or freight of any kind, including crude oil or for the transmission of telephone or telegraph messages, or for the production, generation, transmission, delivery or furnishing of heat, light, water or power or for the furnishing of storage or wharfage facilities, either directly or indirectly, to or for the public, and every common carrier, is hereby declared to be a public utility subject to such control and regulation by the railroad commission as may be provided by the legislature, and every class of private corporations, individuals, or associations of individuals hereafter declared by the legislature to be public utilities shall likewise be subject to such control and regulation. The railroad commission shall have and exercise such power and jurisdiction to supervise and regulate public utilities, in the State of California, and to fix the rates to be charged for commodities furnished, or services rendered by public utilities as shall be conferred upon it by the legislature, and the right of the legislature to confer powers upon the railroad commission respecting public

utilities is hereby declared to be plenary and to be unlimited by any provision of this constitution. From and after the passage by the legislature of laws conferring powers upon the railroad commission, respecting public utilities, all powers respecting such public utilities vested in boards of supervisors, or municipal councils, or other governing bodies of the several counties, cities and counties, cities and towns, in this state, or in any commission created by law and existing at the time of the passage of such laws, shall cease so far as such powers shall conflict with the powers so conferred upon the railroad commission; *provided, however,* that this section shall not affect such powers of control over public utilities as relate to the making and enforcement of local, police, sanitary and other regulations, other than the fixing of rates, vested in any city and county or incorporated city or town as, at an election to be held pursuant to law, a majority of the qualified electors of such city and county, or incorporated city or town, voting thereon, shall vote to retain, and until such election such powers shall continue unimpaired; but if the vote so taken shall not favor the continuation of such powers they shall thereafter vest in the railroad commission as provided by law; *and provided, further,* that where any such city and county, or incorporated city or town, shall have elected to continue any of its powers to make and enforce such local, police, sanitary and other regulations, other than the fixing of rates, it may, by vote of a majority of its qualified electors voting thereon, thereafter surrender such powers to the railroad commission in the manner prescribed by the legislature; *and provided, further,* that this section shall not affect the right of any

city and county or incorporated city or town, to grant franchises for public utilities upon the terms and conditions and in the manner prescribed by law. Nothing in this section shall be construed as a limitation upon any power conferred upon the railroad commission by any provision of this constitution now existing or adopted concurrently herewith. (Amendment adopted November 3, 1914.)

PERTINENT PROVISIONS OF PUBLIC UTILITIES ACT OF THE STATE OF CALIFORNIA.

(Statutes of California 1915, C. 91, p. 115.)

SEC. 13. (b) Every public utility shall furnish, provide and maintain such service, instrumentalities, equipment and facilities as shall promote the safety, health, comfort and convenience of its patrons, employees and the public, and as shall be in all respects adequate, efficient, just and reasonable (p. 122).

SEC. 22. (a) Every common carrier shall afford all reasonable, proper and equal facilities for the prompt and efficient interchange and transfer of passengers, tonnage and cars, loaded or empty, between the lines owned, operated, controlled or leased by it and the lines of every other common carrier, and shall make such interchange and transfer promptly without discrimination between shippers, passengers or carriers either as to compensation charged, service rendered or facilities afforded. Every railroad corporation shall receive from every other railroad corporation, at any point of connection, freight cars of proper standard and in proper condition, and shall haul the same either to destination, if the destination be upon a line owned, operated or controlled by such railroad corporation, or to point of transfer according to route billed, if the destination be upon the line of some other railroad corporation.

Nothing in this section contained shall be construed as in anywise limiting or modifying the duty of a common

carrier to establish joint rates, fares and charges for the transportation of passengers and property over the lines owned, operated, controlled or leased by it and the lines of other common carriers, nor as in any manner limiting or modifying the power of the commission to require the establishment of such joint rates, fares and charges (p. 128).

SEC. 30. Every public utility shall obey and comply with each and every requirement of every order, decision, direction, rule or regulation made or prescribed by the commission in the matters herein specified, or any other matter in any way relating to or affecting its business as a public utility, and shall do everything necessary or proper in order to secure compliance with and observance of every such order, decision, direction, rule or regulation by all of its officers, agents and employees (p. 132).

SEC. 31. The railroad commission is hereby vested with power and jurisdiction to supervise and regulate every public utility in the state and to do all things, whether herein specifically designated or in addition thereto, which are necessary and convenient in the exercise of such power and jurisdiction (p. 132).

SEC. 36. Whenever the commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably

to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the commission orders the erection of a new structure, it may also fix the site thereof. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the commission has ordered to be erected, require joint action by two or more public utilities, the commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities shall have such reasonable time as the commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the commission shall have authority, after further hearing, to make an order fixing

the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured (p. 134).

FIRST LOS ANGELES UNION STATION DECISION OF SUPREME COURT OF THE UNITED STATES.

RAILROAD COMMISSION OF CALIFORNIA v. SOUTHERN PACIFIC COMPANY AND SOUTHERN PACIFIC RAILROAD COMPANY. (No. 283.)

RAILROAD COMMISSION OF CALIFORNIA v. ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY. (No. 284.)

RAILROAD COMMISSION OF CALIFORNIA v. LOS ANGELES AND SALT LAKE RAILROAD COMPANY. (No. 285.) (264 U. S. 331.)

Argued November 22, 1923. Decided April 7, 1924.

On writs of *certiorari* to the Supreme Court of California to review judgments annulling orders of the Railroad Commission, requiring the establishment of a union station. Affirmed.

See same case below, 190 Cal. 214, 211 Pac. 460.

The facts are stated in the opinion.

Mr. Chief Justice Taft delivered the opinion of the Court:

The question in this case is whether the State Railway Commission of California has power to require the Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company, and the Salt Lake and Los Angeles Railway Company to build an interstate union depot in the city of Los Angeles.

The proceedings were begun in 1916 before the Railway Commission by complaints of civic associations and others against the railway companies. Before the hearing and the decision were had, the Transportation Act of Congress of February 28, 1920 (41 Stat. at L. 456, Chap.

91, Comp. Stat. Sec. 10,071¼, Fed. Stat. Anno. Supp. 1920, p. 72), was enacted. In December, 1921, after two hearings, an amended order against the railways was made, by which they were required to remove certain grade crossings and build a union terminal within a certain defined area in the city.

The railway companies sought review of this order in the Supreme Court of the state, and their three writs were heard and disposed of as one case. The Supreme Court of the state held that the order was beyond the power of the State Railway Commission, because the subject-matter was committed to the Interstate Commerce Commission by the Transportation Act of 1920. The Court further held that if the order had effected the elimination of grade crossings alone, it would have been valid; but that, associated, as it was, with the establishment of the union station, it must be annulled. We have brought the case of the Commission against each of the railways here by *certiorari*.

Lines of the three railways approach Los Angeles from the north, and come together in the city near the North Broadway viaduct as it crosses the Los Angeles River. Thence the Salt Lake and Santa Fe lines follow the bed of the Los Angeles River, one on its east and the other on its west bank. The Salt Lake passenger station is at First Street. Its main line from Pasadena and Glendale comes from the north, but its line from Salt Lake comes in from the south. From north to south in Los Angeles, its line hugs the east bank of the river for 3 miles. The Santa Fe station is opposite that of the Salt Lake Railway on the west bank. The Santa Fe hugs the west bank for 3 miles in the city. One of its lines

leaves Los Angeles by the north for Chicago. Another leaves the city by the south, through Riverside, for Chicago. The Southern Pacific does not follow the river bed after passing under the Broadway viaduct, but extends in a southwesterly direction until it reaches the north end of Alameda Street. From that point it runs south through the city at grade on that street. Its station is at Fifth street, and lies southwesterly from the Salt Lake and Santa Fe stations and a quarter of a mile distant from them. The eastern main line of the Southern Pacific crosses the river at Alhambra Avenue, joins the San Francisco main line, and reaches the station from there by the same tracks on Alameda Street. The Southern Pacific occupies Alameda Street on grade, and longitudinally in both directions from its station for 3 miles. Its lines toward the south go to San Pedro and Santa Ana.

The order of the Railroad Commission requires the abandonment of the passenger stations of the three railways. The Southern Pacific station is a comparatively modern depot and would be adequate for many years. Those of the other two companies are not adequate, but they have ample ground upon which to construct suitable stations. The order required the removal from Alameda Street of the main line of the Southern Pacific for 3 miles, permitting the use of its tracks in that street for switching during a few hours at night. The order also required that, by viaducts over the river and over the Salt Lake and Santa Fe tracks on the river banks, grade crossings should be eliminated. The order further required that the three railways should purchase jointly land enough in an area reaching from Alameda Street to the river

and from Aliso Street to Alhambra Street to erect a suitable union station, to be situated somewhere near a square called the Plaza. The railways are directed to make such additions to, extensions of, improvements and changes in, the existing railroad facilities of said companies, as may be reasonably necessary and incidental to the use of said union passenger station. This would require the removal of the present station of the Southern Pacific from Fifth street toward the Plaza, at least half a mile, and the stations of the Santa Fe and the Salt Lake from First street, on the river, to the Plaza, more than a quarter of a mile. The changes to be effected under the order will require, in the abandonment of the Southern Pacific main track on Alameda street for 3 miles, a joint use by the Southern Pacific of main tracks on the river bank with either the Salt Lake or the Santa Fe, or the construction of its own main tracks on one side or the other along the river bank. The main tracks of the Salt Lake must be extended across the Los Angeles River on a viaduct to the area selected for the union station. The main track of the Santa Fe runs along the river side of the selected area, but an extension of its main tracks will have to be made to bring it into the new station.

The order requires the joint use of land, tracks, and terminal facilities valued at $28,050,691; the abandonment of three existing passenger stations of the railways as such, and the ultimate capital expenditure for all recommendations of from $25,000,000 to $45,000,000.

The Railroad Commission, in the Supreme Court of the state, pressed the argument that, in view of its findings that the union station was an indispensable element in

getting rid of the grade crossings, it had the incidental right to order its building. The Court rejected the argument. It said: "that notwithstanding the views expressed by the Railroad Commission in its findings and conclusions in the proceeding herein presented for review, we can perceive no indispensable relation between the elimination of grade crossings and the establishment of union depot facilities, nor can we see an insurmountable difficulty why jurisdiction over the matter of eliminating grade crossings may not be exercised in a proper case consistently, and it may be concurrently, with the exercise of the authority which is vested by the Act of Congress of 1920 in the Interstate Commerce Commission over the subject of union terminal depot facilities." (190 Cal. 214, 211 Pac. 465.)

The State Supreme Court thus modifies the findings of the Railroad Commission in so far as they sought to tie the validity of its order establishing a union station to its unquestioned police power to regulate grade crossings in the interest of the public safety. We avoid any inquiry how far, if at all, the principle laid down in *Erie R. Co. v. Public Utility Comrs.*, 254 U. S. 394, 65 L. Ed. 322, P. U. R. 1921C, 143, 41 Sup. Ct. Rep. 169, is qualified by the provisions of the Transportation Act. Our only question here is whether the power to direct a new union station, with its essential incidents, is committed exclusively to the Interstate Commerce Commission under the Act of 1920.

In *Dayton-Goose Creek R. Co. v. United States*, decided January 7, 1924 (263 U. S. 456, *ante*, 388, 33 A. L. R. 472, 44 Sup. Ct. Rep. 169), this court said of the Transportation Act:

"The new act seeks affirmatively to build up a system of railways prepared to handle promptly all the interstate traffic of the country. It aims to give the owners of the railways an opportunity to earn enough to maintain their properties and equipment in such a state of efficiency that they can carry well this burden. To achieve this great purpose, it puts the railroad systems of the country more completely than ever under the fostering guardianship and control of the (Interstate Commerce) Commission, which is to supervise their issue of securities, their car supply and distribution, their joint use of terminals, their construction of new lines, their abandonment of old lines, and by a proper division of joint rates, and by fixing adequate rates for interstate commerce, and, in case of discrimination, for intrastate commerce, to secure a fair return upon the properties of the carriers engaged." New England Divisions Case (*Akron C. & Y. R. Co. v. United States)* 261 U. S. 184, 67 L. Ed. 605, 43 Sup. Ct. Rep. 270; *Railroad Commission v. Chicago B. & Q. R. Co.*, 257 U. S. 563, 66 L. Ed. 371, 22 A. L. R. 1086, 42 Sup. Ct. Rep. 232.

On the one hand it is urged that, with the purposes thus declared, the act commits to the supervision and control of the Interstate Commerce Commission such an undertaking as is here in question, involving a new capital investment of from twenty-five to forty-five millions of dollars in the terminals of three great interstate railway systems in the largest city of our western coast. On the other hand, it is earnestly contended that, since no specific provision is made for the supervision of interstate union stations by the Interstate Commerce Commission, the whole subject remains in the control of the state railroad

commissions. We must examine the sections of the act in some detail to determine the force of these counter contentions.

The term "railroad" is defined in the act, paragraph 3, section 1, section 400, to include all switches, spurs, tracks, terminals and terminal facilities of every kind, used or necessary in the transportation of persons or property, including freight depots, yards, and grounds used therein. Section 402, after defining the term "car service" under the act as including use, control, distribution, and exchange of locomotives, cars and other vehicles used in interstate transportation, provides for just regulation of it by the Commission, and gives that body power, in case of shortage of equipment or other emergency, to suspend the regulations, to give just directions, without regard to ownership, to promote the service and to adjust proper compensation for its use and "to require such joint or common use of terminals," including main track or tracks for a reasonable distance outside of such terminals, as, in the opinion of the Commission, will meet the emergency and the public interest, and, upon hearing determine just compensation for use of same. Paragraph 16 authorizes the Commission to provide transportation by other carriers if one carrier is unable to handle its traffic, upon terms fixed by the Commission.

By section 405, amended section 3 of the Interstate Commerce Act provides in its third paragraph that all carriers shall afford all reasonable facilities for the interchange of traffic between their respective lines and for forwarding and delivering passengers. Paragraph 4 provides that the Commission may, in the public interest, and without impairment of a carrier's power to handle

its own business with its terminal facilities, require the use of its terminal facilities, including its main-line track or tracks for a reasonable distance outside of its terminal for another carrier or carriers, upon such terms as may be agreed upon by the parties, fixed by the Commission, or determined by suit, as in condemnation proceedings.

It is obvious from the foregoing that Congress intended to place under the superintending and fostering direction of the Interstate Commerce Commission all increased facilities in the matter of distribution of cars and equipment and in joint terminals, in the exchange of interstate traffic and passengers between railways so as to make it prompt and continuous. It not only provides for the temporary expropriation of terminals and main track of one railway to the common use of one or more other railways in an emergency, but it also contemplates the compulsory sharing of one company's terminals with one or more companies as a permanent arrangement. This is a drastic limitation of a carrier's control and use of its own property in order to secure convenience and despatch for the whole shipping and traveling public in interstate commerce. It gives to the Interstate Commerce Commission the power and duty, where the public interest requires, to make out of what is the passenger and freight station of one interstate carrier, a union station or depot.

But it is insisted that the supervisory power thus conferred does not include the installation of an interstate union station, where its terminals and main tracks are newly built, and the interstate carriers are compelled to expropriate, not the terminal property of another interstate carrier, but property of others than carriers,

not theretofore used for terminals. This would be giving power to the Interstate Commerce Commission to provide for a small and contracted union station of interstate carriers, limited to the terminals of one carrier, and would leave the larger and more important union stations of interstate carriers to the control of state commissions. We think, however, that means of control over installation of such new union stations for interstate carriers is given to the Interstate Commerce Commission in amended paragraphs (18 to 21) of section 402. They provide that no interstate carrier shall undertake the extension of its line of railroad, or the construction of a new line of railroad, or shall acquire or operate any line of railroad, or extension thereof, or shall engage in transportation over such additional or extended line of railroad, unless and until the Commission shall certify that public convenience, present or future, requires it; and that no carrier shall abandon all or any portion of its line, or the operation of it, without a similar certificate of approval. Such a certificate is, we think, necessary in the construction of a new interstate union station, which involves a substantial and expensive extension of the main tracks or lines of interstate carriers who theretofore have maintained separate terminals.

It is argued that paragraphs 18 to 21, of section 402, refer only to extensions of a line of railroad having the purpose to include new territory to be served by the interstate carrier, and do not refer to an extension of new main track for the mere purpose of rearranging terminals within the same city. We do not think the language of paragraphs 18 to 21 can be properly so

limited. We are confirmed in this by paragraph No. 22 which immediately follows:

"The authority of the Commission conferred by paragraphs 18 to 21, both inclusive, shall not extend to the construction or abandonment of spur, industrial, team, switching or side tracks, located or to be located wholly within one state, or of street, suburban, or interurban electric railways which are not operated as a part or parts of a general steam railroad system of transportation."

This is a palpable distinction between the main tracks of an interstate carrier, and its spur, industrial, switching, or side tracks, and shows the legislative intention to retain any substantial change in the main tracks within the control of the Interstate Commerce Commission. It may well be that a mere relocation of a main track of an interstate carrier which does not involve a real addition to, or abandonment of, main tracks and terminals, or a substantial change in destination, does not come within paragraphs 18 to 21. One might, too, readily conceive of railroad crossings or connections of interstate carriers in which the exercise by a state commission of the power to direct the construction of merely local union stations or terminals without extensions of main tracks and substantial capital outlay should be regarded as an ordinary exercise of the police power of the state for the public convenience, and would not trench upon the power and supervision of the Interstate Commerce Commission in securing proper regulation of an interchange of interstate traffic or passengers. Only a lawful order of the Interstate Commerce Commission would raise a question of the power of a state commission in such cases, as the proviso

of paragraph 17, section 402, of the Transportation Act, shows:

"That nothing in this act shall impair or affect the right of a state in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this act."

But there is a great difference between such relocation of tracks or local union stations and what is proposed here. The differences are more than that of mere degree; they and their consequences are so marked as to constitute a change in kind. They come within paragraphs 18 to 21 of section 402, and require a certificate of the Interstate Commerce Commission as a condition precedent to the validity of any action by the carriers, or of any order by the State Commission.

The proviso of paragraph 21 of section 402 is significant of the distinction we are pointing out. It forbids the Commission to authorize or order the extension of its lines "unless the Commission finds, as to such extension, that it is reasonably required in the interest of public convenience and necessity, or as to such extension * * * that the expense involved therein will not impair the ability of the carrier to perform its duty to the public."

The extensions of the lines and main tracks of these railways under the plan which the State Commission has ordered are not great in distance, but they involve a new intramural destination for each railway, with important changes in the handling of interstate traffic and passengers. Great expense attends such changes of

the main tracks in a crowded city, and they here carry with them, as necessarily incident thereto, the abandonment of available sites and of valuable existing passenger and freight stations, and the construction of a new union station elsewhere, imposing on the three railways a cost in making the changes of from twenty-five millions to forty-five millions of dollars. We think it clear that, in such an extension of main lines with their terminals, the Interstate Commerce Commission is required by the act to make a finding that the expense involved will not impair the ability of the carriers concerned to perform their duty to the public.

The purpose of Congress to prevent interstate carriers from incurring expense which will lessen their ability to perform well their interstate functions is further shown in section 439 of the Transportation Act, whereby the Interstate Commerce Act is amended by insertion of section 20a. This new section subjects to the approval or rejection of the Interstate Commerce Commission the issue by an interstate carrier of all future shares of stock, bonds, or other evidence of indebtedness, and forbids approval unless the Commission shall find that their issue is for a lawful purpose, is compatible with the public interest, is appropriate and necessary to the discharge of its public duty as a common carrier, and will not impair its ability to perform that service. This is, of course, *in pari materia* with the restriction of paragraph 21 of section 402, to prevent a possible impairment of the financial ability of interstate carriers to discharge their interstate commerce duties. Such a heavy burden as that involved in this new union station and the main track changes and extensions and

other accessories would, in all probability, require the three railways to issue new capital securities, and this could not be done without the approval of the Interstate Commerce Commission. To be sure, this provision only becomes operative when securities have to be issued, and would not, of itself, prevent action by a state commission until such securities are seen to be necessary; but the provision indicates the general congressional plan.

We were advised by statements at the bar after the California Supreme Court handed down its decision in this case, the city of Los Angeles filed a petition with the Interstate Commerce Commission, asking for an order to provide, maintain, and use a union station; that a hearing followed, and that, pending the decision in this Court, the matter is held under consideration.

For the reasons given, we think the course taken by the city of Los Angeles was the correct one. Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of section 402 of the Transportation Act, the respondent railways can not be required to provide a new interstate union station, and to extend their main tracks thereto, as ordered by the State Railroad Commission.

The judgment of the Supreme Court of California is affirmed.

FIRST LOS ANGELES UNION STATION DECISION OF THE INTERSTATE COMMERCE COMMISSION.

LOS ANGELES PASSENGER TERMINAL CASES

No. 14778[1]

CITY OF LOS ANGELES v. LOS ANGELES & SALT LAKE RAILROAD COMPANY ET AL.

Submitted February 27, 1925.

Decided July 6, 1925.

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1. Public convenience and necessity found to permit the abandonment of operation of all passenger and freight train service, except industrial freight switching service, on the main line of the Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in the city of Los Angeles, California.

2. Public convenience and necessity found not to require the construction of new or extension of existing lines of railroad in the city of Los Angeles, California, by the Southern Pacific and the Los Angeles & Salt Lake, as described in the application in Finance Docket No. 3569. Application denied.

3. The extension by defendants of their respective main lines of steam railroad so as to reach and serve such union passenger station and terminal as they may

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(1) This report also embraces Finance Docket No. 3556, In the Matter of the Application of Southern Pacific Company and Southern Pacific Railroad Company for certificate of public convenience and necessity, and Finance Docket No. 3569, In the Matter of the Application of Southern Pacific Company, Southern Pacific Railroad Company, and the Los Angeles & Salt Lake Railroad Company for certificate of public convenience and necessity.

construct and establish in a described portion of the city of Los Angeles, California, in accordance with a lawful order of the Railroad Commission of California, and the extension of such main lines to provide for rearrangement of their respective passenger and freight routes incidental to the convenient and proper operation of such union station and terminal, found reasonably required in the interest of public convenience and necessity and the expense involved therein found not to impair the ability of said defendants to perform their respective duties to the public.

4. In addition to the abandonment of train service on Alameda street as above authorized, public convenience and necessity found to permit the abandonment by defendants of such portions of their lines of steam railroad, or of all or any portion of the interstate service thereon, as may be incidental to the rearrangement of routes, tracks, and terminal facilities necessitated by the establishment of a union passenger station and terminal as indicated.

5. Joint use by defendant steam railroads of such main-line tracks of each other as may be incidental, and necessary or convenient, to the proper operation of a union passenger depot and terminal established as above indicated found to be in the public interest and to be practicable, without substantially impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business.

6. Jurisdiction of No. 14778 and Finance Docket No. 3556 retained for the purpose of making such further

findings and orders and issuing such certificates as the record warrants.

Jess E. Stephens, Max Thelen, and *Milton Bryan* for city of Los Angeles; and *Hugh Gordon, Carl I. Wheat,* and *Woodward M. Taylor* for Railroad Commission of the State of California.

William W. Clary for Central Development Association; *Gurney E. Newlin* for Central Development Association, Business Men's Cooperative Association, Lincoln Heights Board of Trade, Broadway Improvement Association, North Main Street Improvement Association, and Greater Los Angeles Improvement Council, interveners.

C. W. Durbrow for Southern Pacific Company and Southern Pacific Railroad Company; *A. S. Halsted, Fred E. Pettit, Jr., H. A. Scandrett,* and *J. M. Souby* for Los Angeles and Salt Lake Railroad Company and Union Pacific Railroad Company; *E. W. Camp, T. J. Norton, F. E. Andrews,* and *M. W. Reed* for Atchison, Topeka and Santa Fe Railway Company; and *Frank Karr* for Pacific Electric Railway Company.

Spencer Thorpe for W. H. Daum and *George H. Dunlop* for Municipal League of Los Angeles, interveners.

REPORT OF THE COMMISSION

ATCHISON, *Chairman:*

The city of Los Angeles is a municipal corporation of the State of California and complainant in No. 14778. Defendants are railroads engaged in interstate transportation of passengers and freight, and enter Los Angeles. The city asks that the Commission direct defendants (1) to construct, operate, and use a union passenger depot

within a defined area in that city, and to acquire land necessary therefor; (2) to abandon main-line passenger and freight service, except local freight switching, on and along a portion of Alameda street in Los Angeles; (3) to eliminate and abandon certain railroad grade crossings in the city; and (4) to construct or acquire such structures, tracks, and facilities, to construct or abandon such lines or facilities of operation, and to arrange for such joint or other use of existing tracks, or tracks to be constructed within the city of Los Angeles, as may be reasonably necessary and incidental as a part of and in furtherance of the foregoing. The only relief sought against defendant Pacific Electric Railway is the participation by it in the expense of constructing a viaduct at Aliso street in Los Angeles to eliminate grade crossings on both banks of the Los Angeles River.

In Finance Docket No. 3556 the Southern Pacific Company and its lessor, Southern Pacific Railroad Company ask for a certificate of public convenience and necessity authorizing the abandonment of 0.15 mile of main-line track, and the abandonment of operation of passenger and freight train service (except freight switching service) on 6.6 miles of main-line track on Alameda street. In Finance Docket No. 3569 the Southern Pacific Company, Southern Pacific Railroad Company, and Los Angeles and Salt Lake Railroad Company ask for a certificate of public convenience and necessity authorizing applicants to construct certain new main lines and to extend their existing main lines of railroad in Los Angeles so as to permit the joint use and operation by these applicants of the existing passenger station of the Southern Pacific at Fifth street and Central avenue, and so as

to permit the removal of Southern Pacific passenger and freight trains, except industrial switching, from Alameda street. The Railroad Commission of the State of California appeared in support of the complaint, and with the city intervened in opposition to the relief sought by applicants. There were other interventions for or against the complaint.

HISTORY OF PROCEEDINGS.

The matters involved originated in complaints filed with the Railroad Commission of California in 1916, which asked that body to order the elimination of certain grade crossings in Los Angeles. At least one complaint sought to require the three steam lines to provide and use a union passenger station. On June 11, 1917, the Supreme Court of California upheld the jurisdiction of the Railroad Commission to order the separation of grades, which had been questioned, and directed it to consider and determine the complaints upon the merits. *Civic Center Association v. Railroad Commission,* 175 Cal. 441.

The jurisdiction of the Railroad Commission to enter an order for a union station was not then questioned. Following exhaustive investigation by its engineers, and after numerous hearings, the Railroad Commission on April 26, 1921, made its decision, known as No. 8901, 19 Cal. R. R. Com. 740. The Railroad Commission ordered the defendant railroad companies to file plans for the elimination of specified railroad grade crossings along the Los Angeles River, and for the erection of a union passenger station at some site within a defined area in the vicinity of the Plaza in Los Angeles; and upon the completion thereof to remove all passenger traffic and all

freight traffic except local freight switching from a designated portion of Alameda street. The Plaza is a small circular park, which marks the center of the original pueblo of Los Angeles. During the hearings which culminated in the order just described, applicants sought the Railroad Commission's approval of the execution of a plan generally similar to that now proposed in our Finance Dockets No. 3556 and No. 3569. This application was consolidated with the earlier proceedings mentioned for hearing and decision, and was subsequently dismissed by the Railroad Commission.

Subsequent to the issuance of Decision No. 8901, the city council of the city of Los Angeles, which had taken no position as to the necessity of a union station, formally approved, endorsed, and accepted the decision as determinative, and in the proceedings which followed appeared in support of the Railroad Commission's findings and order.

Following a rehearing of Decision No. 8901, had on petition of the railroad companies, the Railroad Commission on December 6, 1921, issued its Decision No. 9838 modifying the previous conclusions. 20 Cal. R. R. Com. 937. Briefly, the later decision ordered the carrier to proceed to procure sufficient grounds for a union passenger station within a defined area, to prepare and submit plans for such union station, passenger terminal, and necessary facilities, and upon approval of the plans by the Commission, to proceed with the construction of such station and terminal. Similar orders were included for the elimination of specified grade crossings.

Each of the three steam lines thereupon took the Railroad Commission's decision and order to the Supreme

Court of California. On December 19, 1922, that Court in *Atchison, T. & S. F. Ry. Co. v. Railroad Commission,* 190 Cal. 214, held that the transportation act, 1920, vested full power and authority over the matter of union terminal depot facilities of interstate carriers by railroad in the Interstate Commerce Commission, and divested the Railroad Commission of California of the jurisdiction sought by it to be exercised in the proceedings and order presented for review. Upon petition of the Railroad Commission, the Supreme Court of the United States granted writs of *certiorari* in these matters.

The city of Los Angeles thereupon filed with this Commission the complaint in No. 14778. Hearing thereon was had in July, 1923, and a complete transcript of the testimony before the State Commission received as a part of the evidence. Argument and submission was deferred until the decision of the Supreme Court of the United States. That body on April 7, 1924, affirmed the judgment of the Supreme Court of California, and held that a certificate of public convenience and necessity from this Commission was necessary in the construction of a new interstate union station, involving a substantial and expensive extension of the main tracks or lines of interstate carriers who theretofore have maintained separate terminals, such as the State Commission proposed to require. *R. R. Comm. v. Southern Pac. Co.,* 264 U. S. 331. In concluding, the Supreme Court used the following language:

> We were advised by statements at the bar that after the California Supreme Court handed down its decision in this case, the city of Los Angeles filed a petition with the Interstate Commerce Commission asking for an order to provide, maintain and use a

union station, that a hearing followed and that, pending the decision in this Court, the matter is held under consideration.

For the reasons given we think the course taken by the city of Los Angeles was the correct one. Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of section 402 of the Transportation Act,[2] the respondent railways can not be required to provide a new interstate union station and to extend their main tracks thereto as ordered by the State Railroad Commission.

Subsequent to the issuance of this decision the Southern Pacific and the Salt Lake filed the above-mentioned applications in Finance Dockets Nos. 3556 and 3569. These applications were consolidated with No. 14778, and the evidence previously received in the latter case made available in the finance proceedings also. Hearing of the consolidated cases was had in June, 1924.

Jurisdiction.

Jurisdictional questions arise at the outset. Defendants deny our authority to require the construction of a union station as sought by the complaint in No. 14778. Complainant contends that Congress has reposed that authority with us. All parties concede that if we have the power to require the construction of a union station, it has come in the Transportation Act, 1920. Prior to that enactment such power was clearly in the states. In numerous instances states had by constitution or statute delegated power to their railroad commissions to require the construction and operation of union stations. In such

(2) These are paragraphs similarly numbered, now a part of section 1 of the Interstate Commerce Act.

cases, where the facts reasonably come within the legislative enabling act, the state Courts have upheld orders of the state commissions. The state Courts have held the order could not be defeated (1) by showing that compliance would require a railroad to acquire additional property by the exercise of the power of eminent domain, (2) or because it contemplated the abandonment by some railroads of their existing passenger stations and other passenger facilities, (3) or because compliance would require a railroad to acquire the right to use the property of a rival railroad.[3]

Careful study of the Interstate Commerce Act convinces us that Congress has not conferred upon us authority to require carriers to construct union passenger stations under conditions such as are here present. We are not considering a case where prejudice or discrimination is involved. There is no language in the act apt for the purpose. The provision in section 3, paragraph (4) for joint use of terminal facilities expressly covers only facilities existing when the requirement is made. The Supreme Court concedes this in *R. R. Comm. v. Southern*

(3) Cases in point are *State ex rel. Railroad Commissioners v. Atlantic Coast Line R. Co.*, 67 Fla. 441; *Griffin v. Southern Ry. Co.*, 150 N. C. 312; *Corporation Commission v. Seaboard Air Line Ry. Co.*, 161 N. C. 270; *North Carolina Corporation Com'n. v. Southern Ry. Co.*, 185 N. C. 435; *Missouri, K. & T. Ry. Co. v. State*, 38 Okl. 401; *Gulf, Colorado & S. F. Ry. Co. v. State* (Tex. Civ. App.), 167 S. W. 192; *State v. St. Louis Southwestern Ry. Co.* (Tex Civ. App.), 199 S. W. 829; *Railroad Commission of Alabama v. Northern Alabama Ry. Co.*, 182 Ala. 357; *Railroad Commission of Alabama v. Alabama Great Southern Ry. Co.*, 185 Ala. 354; *Mayor and Aldermen of Worcester v. Norwich & Worcester Railroad Co.*, 109 Mass. 103; *State v. St. Louis Southwestern Ry. Co.* (Tex. Civ. App.), 165 S. W. 491; *Wisconsin, Minnesota & Pacific Co. v. Jacobson*, 179 U. S. 287, 302 (Switch connection); *Missouri, O. & G. Ry. Co. v. State*, 29 Okl. 640; *Chicago, R. I. & Pac. Ry. Co. v. State*, 90 Okl. 173.

Pacific Co., supra, and as warrant for the control which it states we have over the larger and more important new terminal projects refers directly (page 344) to paragraphs (18) to (21) of section 1. Paragraph (18) forbids the extension, construction, acquisition, operation, or abandonment of any line of railroad by any carrier subject to the act without first securing from us an appropriate certificate of convenience and necessity. Paragraph (19) provides for the procedure upon application for certificate, and paragraph (20) for the issuance of certificates and the enforcement of paragraphs (18) and (19). Paragraph (21) empowers us to authorize or require a carrier by railroad subject to the act to provide itself with safe and adequate facilities for performing as a common carrier its car service, and to extend its line or lines. The same paragraph also provides a penalty for noncompliance with orders made by us in pursuance thereof.

The term "car service" as used in the act relates to *vehicles* used in the transportation of *property.* The authority to require a carrier to extend its line may include authority to require it to construct stations necessary and incidental thereto. That question is not now before us. But assuming such authority, we conclude that paragraph (21) does not empower us to order the construction of a union passenger station where, as here, the station would be the principal thing and the extension of lines the incident.

Complainant argues that we have power to make the order prayed for under paragraph (3) of section 3, which provides, in part, that carriers "shall, according to their respective powers, afford all reasonable, proper, and

equal facilities for the interchange of traffic between their respective lines, and for the receiving, forwarding, and delivering of passengers or property to and from their several lines and those connecting therewith, * * *." Assuming that this provision makes it the duty of carriers to maintain union-station facilities in a case where separate facilities would not be reasonable and proper, we must still look elsewhere for authority to require them to provide such facilities. Such authority is necessarily different from the right to award damages for violation of provisions of the act.

If recourse be had to our duty under section 12 to enforce the provisions of the act, or to our power under section 15 to determine and prescribe what "practice" in lieu of that found in violation of the act will thereafter be just, fair, and reasonable, we are met by the decision of the Supreme Court in *United States v. Pennsylvania R. R. Co.*, 242 U. S. 208. The case arose before the Transportation Act, 1920, and does not involve any additions or changes in our jurisdiction made by that act. In the case under review our order required defendant to provide and furnish tank cars for the interstate shipment of oil from certain refineries. In affirming the judgment of the lower Court enjoining our order the Supreme Court particularly referred to section 12 and stated that it was the duty of carriers both under the original act to regulate commerce of 1887 and the amendment of 1906 to furnish the instrumentalities of transportation, but indicated that jurisdiction to enforce the duty was in the Courts and not in us. (p. 227.)

The Court especially referred to the word "practices" as used in section 15 of the act, and to the contention

that the neglect to provide or the refusal to furnish tank cars was an unlawful "practice," the discontinuance of which we could require. The Court concluded that the collocation of the term with "classifications" and "regulations" was intended to confine it to acts or conduct having the same purpose as its associates, and that it was not to be understood in the broad sense contended. The Court noted that a contrary conclusion would apparently give us power to order enlargement of terminal facilities, increase in the number of locomotives, and extension of tracks or branches. After stating that if Congress had intended such consequence "it would not have left its intention to be evolved from obscure language but would have put it in explicit declaration and with notice and time for accommodation to it," the Court said:

> It is difficult to particularize all that the ruling of the Commission implies of power. What of omission or commission in the carrier's relation to the public may not be said to be a practice or practices in the broad sense attempted to be given to those words? A railroad's powers are its duties, bearing of course, obligations; and all of them by the asserted construction are swept under the jurisdiction of the Commission—so swept by a single word, not of itself apposite, and determined besides, by its association, against the contention. This was apparent to the dissenting commissioners and repelled their concurrence. Well might they have recoiled from going to such extreme upon doubtful implication and have been impelled to declare as they did declare that if such power was given it logically and necessarily extended to every facility of transportation.

In the *Selma Station Case, North Carolina Corporation Commission v. Southern Ry. Co., supra,* the Supreme

Court of North Carolina considered the effect of the passage of the transportation act upon an order theretofore entered by the corporation commission requiring two railroad companies to erect a joint station at a junction of their roads. In deciding in favor of the validity of the state commission's order the Court, at page 459, said in part:[4]

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(4) Further in considering the intent of Congress as expressed in the statute, the opinion proceeds:

"While the Esch-Cummins bill was being debated on the floor of the House of Representatives, Congressman McClintic of Oklahoma offered the following amendment (Congressional Record, November 15, 1919, p. 9067):

'Provided further, that the Commission is hereby given authority to require a carrier to maintain his present arrangement or to make new arrangements relative to the joint use of depots, upon such terms as shall be found by the Commission to be just and reasonable. No carrier shall be allowed to discontinue the use of a depot in connection with another carrier until proper application has been made to the Commission.'

The purpose of this amendment, as explained by Congressman McClintic (pages 9067, 9068) was to give the Interstate Commerce Commission jurisdiction over union passenger depots, largely for the purpose of preventing the railroad companies from tearing apart the unification of passenger depots so extensively established by the government during the federal operation of the railroads. Chairman Esch opposed the adoption of the amendment on the ground that jurisdiction over such matters had always been vested in the various states and should continue to be exercised by them. Chairman Esch said (Congressional Record, November 15, 1919, p. 9068):

'Mr. Chairman, the matter which the gentleman from Oklahoma seeks to reach by his amendment lies almost wholly within the police power of the several states. There have been amendments offered to this bill seeking to preserve such police powers. The committee in framing the bill has sought not to encroach upon such powers. The matters of depots and joint use of depots is practically in the jurisdiction of the state commissions, and all but one of the states have such commissions. In such small matters the detail should be left within the jurisdiction of the state authorities, who know the situation, know the conditions, and know how best to meet the needs. There is, however, a provision in this bill providing for the joint use of terminals.'

Mr. McClintic thereupon offered to withdraw the amendment, but another member insisted on having a vote thereon. Thereafter

> We have examined the act of 1920 carefully, and we do not find any provision therein which grants to the Interstate Commerce Commission, either expressly or by clear implication, the power, or which makes it its duty, to require the erection of passenger stations. It is not claimed in this case that such an order has been made by the Interstate Commerce Commission. The right of the state, then, to act in this particular is expressly preserved to it by Transportation Act of 1920, page 402, subsec. 17 (41 Stat. at Large, p. 477) as follows: "*Provided, however,* That nothing in this act shall impair or affect the right of a state, in the exercise of its police power, to require just, and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this act."

These conclusions are strengthened by scrutiny of the opinion of the Supreme Court in *R. R. Comm. v. Southern Pac. Co., supra,* and which seems to determine the extent to which action by us under the provisions of the transportation act is necessary in such instances as that now presented.

In referring to the construction of new union passenger terminals which require the expropriation by carriers of property of third persons, the expression of the Supreme Court (italics ours) is that "*means of control* over instal-

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his amendment, which would have conferred upon the Interstate Commerce Commission jurisdiction over union passenger depots, was rejected. Congressional Record, November 15, 1919, p. 9071. This would seem to indicate that the Congress saw fit to leave the federal commission without jurisdiction, understanding that the matter of union stations would continue within the jurisdiction of the state commissions."

lation of such new union stations for interstate carriers is given to the Interstate Commerce Commission in amended paragraphs (18 to 21) of section 402." After stating the substance of those paragraphs, the Court continues: "such a certificate is, we think, necessary in the construction of a new interstate union station *which involves a substantial and expensive extension of the main tracks or lines* of interstate carriers who theretofore have maintained separate terminals." The Court then makes clear that the paragraphs mentioned include the extension of new main track for the purpose of rearranging terminals, and continues:

> One might, too, readily conceive of railroad crossings or connections of interstate carriers in which the exercise by a state commission of the power to direct the construction of merely local union stations or terminals without extensions of main tracks and substantial capital outlay should be regarded as an ordinary exercise of the police power of the state for the public convenience and would not trench upon the power and supervision of the Interstate Commerce Commission in securing proper regulation of an interchange of interstate traffic or passengers. Only a lawful order of the Interstate Commerce Commission would raise a question of the power of a state commission in such cases, as the proviso of paragraph 17, section 402 of the Transportation Act shows:
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> "That nothing in this act shall impair or affect the right of a state, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this act."

> But there is a great difference between such relocation of tracks or local union stations and what is proposed here. The differences are more than that of mere degree; they and their consequences are so marked as to constitute a change in kind. They come within paragraphs 18 to 21 of section 402 and require a certificate of the Interstate Commerce Commission as a condition precedent to the validity of any action by the carriers or of any order by the State Commission.

The Court then notes the findings prerequisite to the issuance by us of a certificate for the extension of lines. It comments on the important changes and the considerable expense involved in providing a union station in Los Angeles, and adds:

> We think it clear that in such an extension of main lines with their terminals the Interstate Commerce Commission is required by the act to make a finding that the expense involved will not impair the ability of the carriers concerned to perform their duty to the public.

We conclude that we are not empowered to require the construction of a union passenger station as sought in No. 14778. To make the record clear, we repeat that no question of discrimination or preference is presented here; and that under the issue framed in the complaint in No. 14778 we will give no consideration to matters shown of record for the purpose of determining whether we should issue an order *requiring* the construction and use of a union station by any of the defendants. With respect to the remaining issues before us, we are authorized to find (1) whether the present or future public convenience and necessity permit of the proposed abandon-

ments of line, (2) whether the proposed extensions of line are reasonably required in the interest of public convenience and necessity, and whether the expense involved therein will impair the ability of defendants to perform their duties to the public, and (3) whether such joint use of existing terminal facilities by other than the owning carrier, as would be necessary if a new union passenger terminal were established in the plaza area, is in the public interest and practicable, without substantially impairing the ability of the owning carrier to handle its own business. With these issues in mind we will examine the evidence.

Physical Situation.

A somewhat detailed description of the physical and topographic situation is necessary, and will be set out as Appendix 1 to this report. The places specified in this report are within California, except as otherwise stated; and the streets and highways referred to are within Los Angeles except as may be distinctly stated otherwise.

Grade Crossings.

Alameda Street is the principal north and south street through the industrial section of Los Angeles. The presence on that street for practically its whole length of the Southern Pacific double-track main line at grade results in a grade-crossing situation which all parties agree is a constant danger to life and limb and a serious inconvenience to an extremely heavy east and west urban traffic. The plans here presented for our approval by both complainants and the carriers provide for the removal of all train service from Alameda Street except

local freight switching for industries along or reached by that street, which constitutes about 3 per cent of the present freight traffic. In accomplishing this object, complainant's plan would provide for the abandonment of the present Arcade Station of the Southern Pacific and for the erection of a new union passenger station at another location. Under the plan of the Salt Lake and Southern Pacific the Arcade Station would be converted into a joint station with the Salt Lake, to be reached from the east bank of the river over a viaduct extending west across the river and industrial section to the Sixth Street end of the station.

In addition to the crossings of Macy and Aliso Streets at grade by the Santa Fe detailed in the appendix, that carrier similarly crosses at grade North Main, Seventh, and Ninth Streets on the west bank of the river. Seventh Street is a particularly important east and west thoroughfare. On the east bank of the river the Salt Lake crosses at grade all five of the streets named. At present there are viaducts across the river and river-bank tracks at North Broadway, North Spring, First, and Fourth Streets, but the North Spring Street and First Street viaducts are not adequately constructed and will soon require replacement or removal.

The report of the Railroad Commission's engineers recommended the elimination of all important grade crossings on both banks of the river by depression of the tracks and by improvement of existing viaducts or construction of new viaducts across the river and the adjacent tracks. They recommended that all the streets named be so treated except North Spring Street, and the latter crossing was to be entirely eliminated.

While all parties agree that the grade crossings along Alameda street and along the river should be eliminated, complainant seeks to have the union station question determined before undertaking the extensive construction of viaducts. It contends that the design of the viaducts and the extent of track depression will vary dependent upon whether the carriers' plans for a joint station or its own plans for a union station are approved. Should a union station be erected on some one of the sites suggested to the California Commission or to us, the design of certain viaducts would be changed in degrees varying from a small to a substantial extent. This would not be true as to all crossings. The California Commission on April 21, 1924, ordered the separation of grades at the Ninth Street river crossing, on the theory that the proposed structure would not interfere with any comprehensive plan for dealing with the grade crossing and traffic problems theretofore or at present proposed in proceedings before that body or before us. Plans for a viaduct at Macy Street were to be submitted to that Commission by July 15, 1924.

NEED FOR NEW OR ADDITIONAL STATION FACILITIES.

The present Southern Pacific Arcade Station was built to replace an earlier structure, and was completed in 1915 at a cost of $646,428, including appurtenances except coach yard structures. The station grounds include most of the land bounded by Alameda Street on the east, Central Avenue on the west, and Fourth and Sixth Streets on the north and south, respectively. The station building itself fronts on Central Avenue and faces down Fifth Street. The main concourse is of fireproof construction,

but the wings on both sides are of frame construction with brick walls. It is well designed, and is adequate and suitable for present purposes. As above indicated, the removal of passenger trains from Alameda Street will require either its abandonment or some other means of approach such as applicants here propose.

As a result of protests against the construction of the present Arcade Station, because it was feared that elimination of grade crossings on Alameda Street might thereby be delayed or prevented, the order of the Railroad Commission authorizing demolition of the old Arcade Station and the erection of the present one provided "that the tearing down and abandonment of said old depot, and the taking up, relocating, and placing of new trackage in connection with said new depot, or the approval of this Commission therefor, shall never be used as a defense against the separation of grade crossings in the State of California."

The Salt Lake admits that its passenger station at First Street on the east bank of the river is inadequate and inconvenient. The structure is a two-story frame building, erected in 1891, which cost about $10,000. It is largely given over to division offices and furnishes very poor facilities to passengers. The delay in determining the passenger terminal problem in Los Angeles is undoubtedly the only excuse for its continued existence.

The Santa Fe Depot on the opposite bank of the river fronts west on Santa Fe Avenue at Second Street. It is a relatively small brick building erected in 1893, but subsequently enlarged at various times. Its value, including furniture, parking, paving, etc., is estimated at

$50,000. Though much better than the Salt Lake Station, it can not be considered an adequate station. It would have been replaced several years ago by a modern structure but for the uncertain outcome of the proceedings mentioned.

Complainant claims that the present time is particularly opportune for the building of a union passenger terminal. As to the necessity for such a terminal, it contends that the carriers must shortly expend moneys for needed improvements which will purchase more conveniences for the public and result in more carrier economies if spent on a union terminal instead of on separate facilities, and that Los Angeles desires a union station located with best reference to transit lines and important thoroughfares and in harmony with its civic plans. Defendants contend that as Los Angeles is to a large extent a terminal city, the number of persons transferring from one station to another without stopover is smaller than in many cities of comparable size. Applicants state that their plan for a joint station did not originate in any need of the public for joint or union service, but only from the needs of the Southern Pacific for trackage rights along the Los Angeles River and of the Salt Lake for a new depot.

Proposed Facilities.

Three principal plans for passenger terminal facilities in Los Angeles are before us. The first of these, which complainant referred to at the first hearing in No. 14778 as illustrative, is substantially the plan for a union station at the Plaza included in the recommendations to the California Commission by its engineers following the

investigation mentioned. It is sometimes termed the Sachse Plan, and we will so designate it. The second, which may be termed the Plaza Plan, was presented by the California Commission at the hearing of the consolidated cases, and contemplates the erection of a union station at a specific site in the Plaza area. The city and the California Commission, together termed complainants, ask that the carriers be required to provide themselves with an adequate union passenger terminal at some site in the Plaza district, and not that they build according to any particular plan. The presentation of the Plaza Plan was mainly to demonstrate that an adequate union station conforming to the terms of the State Commission's order could be provided at a cost reasonably comparable with that necessary to provide a joint station for the Southern Pacific and Salt Lake and separate facilities for the Santa Fe. The third plan is that of applicants for a joint station at the Arcade site, which will not be used by the Santa Fe.

The Sachse Plan for a union station at the Plaza is part of a plan of larger scope suggested by the California Commission engineers as a solution of transportation, terminal, and grade-crossing problems in and near Los Angeles. This larger plan, sometimes also referred to as the Sachse Plan, contemplated union passenger and less-than-carload freight terminals, provided for bringing main lines of the Pacific Electric Railway into the station, and included an extensive program of grade separation besides many other related improvements. The order of the California Commission above referred to did not require the carrying out of the larger plan referred to, or the construction of the Sachse

Plan Station. Because of its relation to the more comprehensive plan, the Sachse Station Plan more than either the Plaza or the Arcade Plans takes into consideration the desires of the city of Los Angeles to establish a civic center in the vicinity of the Plaza. In Appendix 2 to this report we outline the three plans presented.

The Southern Pacific and the Salt Lake present an agreement for the establishment of the facilities described in the Appendix as the Arcade Plan, for their joint use. Provision is also made for a right of way along the east bank of the river for the Pacific Electric, an extensive interurban system radiating out of Los Angeles and a subsidiary of the Southern Pacific.[5]

In the agreement between applicants no provision is made under the Arcade Plan for bringing into the station interurban trains of the Pacific Electric, the main line of which would be distant about 1000 feet from the station on a viaduct 37 feet above grade. It would be feasible to extend a spur from the Pacific Electric Viaduct into the Arcade Station grounds so that cars from Pasadena, Long Beach, and other points scheduled to meet steam trains could be operated into the station.

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(5) This right of way would be reached from the Pacific Electric Station at Sixth and Main Streets by continuing the present viaduct, which extends to San Pedro Street, easterly parallel to Sixth Street over the curved approach tracks described at Sixth and Alameda Streets, parallel with and immediately north of the steamline structure, reaching grade on the east bank near Fourth Street. Near Aliso Street the Pacific Electric would cross the steamline tracks, probably overhead, and connect with its private right of way to the northeast. From a point near Alameda Street another viaduct would branch to the south and connect with the Pacific Electric right of way near Fourteenth Street.

The contract between the applicants for the joint use of facilities does not provide for the admission of the Santa Fe to the Arcade Station at any future time. The Santa Fe does not wish to use the Arcade Station or to join in building a union station at the Plaza, although it would least dislike the latter plan. Its preference is for a separate station of its own on the present site.

Comparison of Arcade and Plaza Plans.

1. *Basis of comparison.*—The proponents of plans for a union station in the Plaza district and the applicants who favor a joint station for the Southern Pacific and the Salt Lake at the Arcade site with a separate station for the Santa Fe, each seek a finding from us that public convenience and necessity require the carrying out of the plan which they respectively favor. We therefore compare the plans presented to determine which would best serve the public convenience and meet the public necessity. Except as otherwise indicated, the Arcade Plan will be compared only with the specific Plaza Plan presented at the last hearing. Among the points on which the parties make comparison are the adequacy of the site and the facilities which are to be provided thereon; the accessibility of the station from all portions of the city and suburbs by vehicles, street-car lines, and interurban lines; the convenience of the station to passengers and for handling of baggage, express and mail; the segregation of passenger and freight traffic; the effect of the station site as a barrier between parts of the city; the consonance of the plans with the civic plans of the city; the new money cost of and total investment under the different projects; the relative expense

of operation and the length of time necessary to carry them out. In addition, though not involved before us in the sense that our approval is sought in connection therewith, is the relative possibility under the two plans of eliminating grade crossings of the Pacific Electric in Los Angeles, which here is an element only as it may affect the question of the public interest. Furthermore, the Arcade Plan makes no provision for the Santa Fe, but leaves that road to provide adequate facilities for itself.

2. *Adequacy.*—On the subject of adequacy of facilities most of the evidence related to the adequacy of the Arcade Plan as to site and facilities. Except for a track across Fourth Street connecting with Alameda Street near Third Street, the station would be a stub-end station. The Plaza station also would be of the stub-end type. Stub terminals require more station tracks than do through terminals. One through track is estimated as equivalent to at least two tracks in a stub-end station. At present the Arcade Station has eight station tracks and has two approach tracks at each end leading to Alameda Street. As indicated under the proposed arrangement there would be twelve station tracks and two approach tracks.

As to the adequacy of the Arcade site for a union station, the engineers of the California Commission in their report stated:

> The site is not large enough for an adequate and permanent union station such as, in our opinion, is appropriate for the city of Los Angeles. Not only does it appear that the site may be too narrow for the required number of station tracks but there seems

to be insufficient room for proper mail and express facilities and also for baggage.

In the opinion of the California Commission's engineers an adequate site for a stub terminal for Los Angeles should permit the construction of 18 station tracks. They criticised the mail, express, and baggage facilities because of the seemingly impossibility of locating them so that they could be handled economically at grade. Expansion of the site would be expensive and inconvenient. Relocation of Alameda Street, the closing of or separation of grades on Fourth Street, or the elevation of the station tracks are among the most probable means of expansion, and any of these would be attended by necessary destruction of permanent buildings.

The record contains comparisons of the proposed Arcade joint station with 18 stations in 10 important cities with respect to seating capacity and space provided for concourse, lounge and smoking rooms, and for baggage.[6] Stations doing a large interchange business require more seating capacity than a terminal station, and those handling much suburban travel require more concourse space than those mainly handling through passengers. Considering these facts, the seating capacity of the Arcade Station compares favorably with the others, and its concourse space, while less than in all except four of the stations, is probably ample, particularly if the number of daily trains be taken as an indication of the relative number of persons using the several stations. Of the stations with which comparison is made, only the Kansas

(6) These cities are Boston, Mass.; Buffalo, N. Y.; Chicago, Ill.; Denver, Colo.; Detroit, Mich.; Kansas City, Mo.; Minneapolis, Minn.; Omaha, Nebr.; St. Louis, Mo.; and Washington, D. C.

City Station has more space devoted to lounge and smoking rooms than the Arcade, and only four have substantially more baggage space.

With respect to the adequacy of the Arcade Station buildings for union terminal use, the report of the engineers of the California Commission states:

> The present station building is large enough for some time to come. The baggage room is also sufficient. The express building will do for a "delivery" building, but a new "forwarding" building should be built with 10,000 square feet of floor area, south of the present auto park.

In May, 1923, the last period for which definite figures were given, 62 regularly scheduled through and local trains a day arrived at or departed from the Southern Pacific and Salt Lake stations, besides extra trains. All three carriers serving Los Angeles handle a total of about 84 regularly scheduled trains, about 21 of which are local trains with runs not over 100 miles in length. Based on past experience, applicants estimate that the total number of regularly scheduled trains of all three lines will amount only to about 81 trains in 1943. In 1910, the three steam lines serving Los Angeles handled in their city stations approximately 132 trains daily. At that time the population of Los Angeles was 325,000; now it is more than threefold that figure. The decrease in the number of trains during the intervening period was due to the taking off of certain of the local trains, which in 1910 numbered 78 per day. The restriction of local steam train service apparently resulted from the development of the extensive interurban business of the Pacific Electric, the establishment of auto stage lines, and the increase in the

number of private automobiles. Since 1910 the number of through trains on all lines has increased from 50 per day to 63 at the present time. Applicants' estimate of a total of 81 regular trains in 1943 in part assumes that no local service will be maintained after 1928. The report of the engineers of the California Commission estimates 140 trains daily in 1940. Lately the Southern Pacific built a station at Glendale which is more accessible by automobile from Hollywood and Pasadena than is the Arcade Station.

Applicants' engineering officers estimate that the station under the proposed Arcade Plan will be adequate for the handling of a maximum of 120 trains daily, and for the handling of 200 trains a day if two more approach tracks are added. The abutments of the proposed Sixth Street viaduct can be extended to provide for two additional approach tracks when needed. Such piecemeal construction is undesirable and more expensive than if the whole were constructed at one time.

On the basis of 62 regular scheduled through and local trains a day arriving at or departing from the Southern Pacific and Salt Lake stations, defendants made a comparison of the Arcade Station as a joint facility for the two roads with the stations referred to above. This made particular reference to the number of approach tracks and to the ratio of approach tracks to station tracks. The comparison follows:

Station 1	Tracks			Trains		Trains per day		Trains per busy hour	
	Station	Approach	Ratio	Per day	Per busy hour	Per station track	Per approach track	Per station track	Per approach track
Stub-end stations:									
Los Angles (Arcade)	12	2	6.00	62	8	5.17	31.0	0.67	4.0
Buffalo (Lehigh Valley)	9	3	3.00	16	3	1.78	5.33	1.33	1.0
Detroit (Union)	5	2	2.50	47	9	9.4	23.5	1.8	4.5
Buffalo (D. L. & W.)	6	2	3.00	56	8	9.33	28.0	1.33	4.0
Chicago (Dearborn)	13	4	3.25	120	16	9.2	30.0	1.2	4.0
Chicago (LaSalle)	11	4	2.75	200	24	18.2	50.0	2.18	6.0
St. Louis	32	6	5.33	252	55	7.9	42.0	1.7	9.2
Chicago (C. & N. W.)	16	6	2.67	274	46	17.1	45.6	2.9	7.6
Boston (North)	23	8	2.87	376	45	16.4	47.0	1.9	5.6
Boston (South)	28	10	2.80	621	90	22.2	62.1	3.2	9.0
Through stations:									
Denver	9	4	2.25	95	15	10.5	23.7	1.66	3.75
Detroit (Mich. Cent.)	11	4	2.75	85	15	7.73	21.25	1.36	3.75
Minneapolis (G. N.)	12	4	3.00	116	15	9.66	29.0	1.25	3.75
Buffalo (N. Y. C.)	12	6	2.00	158	18	13.16	26.3	1.5	3.0
Kansas City, Mo.	16	8	2.00	210	34	13.12	26.2	2.12	4.2
Combination:									
Chicago (Ill. Cent. Twelfth Street)	8	3	2.67	76	8	9.5	25.3	1.0	2.67
Omaha (Union)	7	4	1.75	105	15	15.0	26.2	2.14	3.75
Washington, D. C.	32	9	3.20	280	22	8.8	31.1	0.7	2.4

(1) Abbreviations of names of railroads: D. L. & W. Delaware, Lackawanna & Western; C. & N. W., Chicago & North Western; Mich. Cent., Michigan Central; G. N., Great Northern; N. Y. C., New York Central; Ill. Cent., Illinois Central.

In the cases of some of the large stub-end stations, such as the Chicago and North Western Station at Chicago and the Boston South and Boston North Stations, there is very heavy suburban traffic. In many such cases the trains are short, and the practice of placing more than one on a station track at a time increases the number of trains than can be handled during the rush hours. This practice would not be possible to so great an extent at the Arcade Station, due to the predominance of long through trains. In some instances a large number of trains originate or terminate at through stations. Thus, a majority of the

trains handled in the Kansas City Union Station and in the Michigan Central Station at Detroit do not go through. At Kansas City the make-up of practically all through trains is changed. This involves switching over the throat tracks. In the case of the Kansas City station the number of approach tracks does not fully indicate capacity performance, as some of them are necessitated by the roads spreading out as the ribs of a fan in all directions close to the station. Six of the lines from the east are accommodated on two approach tracks. Certain of the stations, such as the Lehigh Valley at Buffalo and the Union Station at Washington, D. C., are so far ahead of present needs as to make them of little value as showing maximum capacity.

Should the Santa Fe erect a new station on or near the site of its present one, as manifestly it will seek to do if we approve applicants' plan, such a station would doubtless be wholly adequate so far as capacity to handle its own traffic properly is considered. If, after the construction of a passenger terminal according to applicants' plan, the question should arise whether the Santa Fe should be required to join in using the Arcade Station, the adequacy of the latter as a union station and the period of time during which it would be adequate would be of importance. Applicants' testimony is to the effect that the Arcade Station would be adequate for all three railroads for many years to come without enlargement of the arrangement as now planned. As indicated, the regularly scheduled trains of the three carriers at Los Angeles are about 84 in number. In addition, extra trains are run as travel demands. Not uncommonly do important trains arrive or depart from Los Angeles in as many as

five sections. A union station at the present time should be able to handle 100 trains a day and 15 trains a busy hour. On this basis there would be for each approach track 50 trains a day and 7.5 trains a busy hour. Of the stations shown in the table, only the Boston South Station has more trains daily for each approach track, and only that station, the St. Louis Station, and the Chicago & North Western Station at Chicago have more trains each busy hour for each approach track. Although the exhibit is based on the number of regularly scheduled trains rather than the actual number handled, the comparison is significant. Moreover, it is apparent that should the Santa Fe use the Arcade Station the time when additional approach tracks would become necessary would be much hastened.

Complainants question applicants' estimate of the train capacity of the Arcade station and contend that, irrespective of the number of approach tracks, the Arcade site is too narrow and too small to serve as a union station for the Southern Pacific, the Salt Lake, and the Santa Fe. They particularly criticize the adverse grade out of the station under the Arcade plan. The 1 per cent grade extends for a distance of 800 feet from the south end of the umbrella sheds, and a lesser grade extends for some distance beyond. This would slow up movements out of the station, and, to some extent, movements in the reverse direction. The grades are less, however, than the ruling grades on the divisions over which engines entering and leaving the station operate. In their report the engineers of the California Commission gave as their opinion that at the end of 20 years 140 trains a day might be expected, and that 12 station tracks with proper

approach tracks would handle that number of trains, although 18 station tracks would be preferable.

There is no refutation of the testimony as to the adequacy of the station layout under the Plaza plan to handle all the trains of all steam carriers serving Los Angeles for many years, and its capacity to care for trains of any other carriers which may enter the city. Though the curved approaches to the throat tracks are not as desirable as straight approaches, the grades and curves would tend to slow up incoming trains and to accelerate outgoing trains and thereby make a fast throat. This plan also provides ample space for baggage and express and sufficient tracks to serve those facilities.

3. *Accessibility.*—The record contains much with respect to the relative accessibility of the two sites. Many important thoroughfares radiate from the Plaza.[7]

In the case of the Arcade station, the radiation of streets is not so favorable. To reach it vehicular traffic

(7) Main Street and Los Angeles Street from the South pass by it, Sunset Boulevard from the west carrying traffic from Hollywood and a large part of the San Fernando Valley reaches it, and Spring Street, which merges into Main at Temple Street, and Broadway, through its tunnel connection with Sunset Boulevard, have ready access to it. North Broadway, leading to San Fernando Road, Pasadena, and the territory east, is close by; so are Macy and Aliso Streets, which carry a heavy volume of traffic to the territory north and east of Los Angeles. Alameda Street, an extended thoroughfare from the south, and diagonal in direction with respect to Main Street, taps a large territory, and passes through the industrial section to within a block of the Plaza and immediately in front of the proposed Plaza Station. San Pedro Street, which fans out intermediate between Main and Alameda Streets, and serves a considerable portion of the city to the south, terminates near the Plaza, and under the Plaza plan would merge into Alameda Street in front of the station. Traffic from the west and southwest can reach the Plaza district through Figueroa Street and Sunset boulevard and thereby avoid the crowded business section.

from the west and southwest must cross the business section or detour around over streets that are not through highways. The Arcade station is, however, somewhat closer to the center of the business, shopping, and hotel district than is the Plaza site, and can be reached by cab therefrom slightly more quickly. The Santa Fe station is not as well located with respect to arterial highways and with respect to the business, shopping, and hotel district as either the Arcade or Plaza sites.

In respect of accessibility by street car lines the Plaza station would have an advantage, owing to the fact that more lines reach the Plaza district and would distribute more passengers without the necessity of transfer than is the case at the Arcade station. There are eight street-railway routes passing the Plaza with an aggregate length of 97.8 miles, as compared with two such routes serving the Arcade station with an aggregate length of 18.2 miles. At present the lines which serve the Plaza are some 750 feet from the concourse of the proposed Plaza station on Alameda Street, and persons reaching the station by street car would have to walk this distance. It would apparently be feasible to shorten this distance at least 300 feet, and permit access to the station from Los Angeles Street by extending the street car tracks around the Plaza. The Santa Fe station is served by three street car lines. There is no through street car service between the Santa Fe and Arcade stations, and transfer between them is inconvenient except by cab. Probably 60 to 70 per cent of the steam railroad passengers use street cars in going to or coming from the station. The engineers of the State Commission considered the Arcade site as a location for a union station only slightly inferior, as re-

spects accessibility by street cars, to the site for a station under the Sachse plan. In their opinion the distance of the Santa Fe site from the business district made it far the least desirable site for a union passenger terminal. As regards accessibility by street cars, they assigned to the Plaza, Arcade, and Santa Fe sites, considered as sites for union stations, weighted ratings of 60, 48, and 18, respectively.

Complainants and applicants stress the accessibility of the sites they favor to the interurban lines of the Pacific Electric. In 1922 those lines carried 88,006,000 passengers. This carrier handles most of the Southern Pacific's local business, including its Long Beach and Pasadena traffic. If the Arcade plan is carried out the Pacific Electric will bring all through trains from the northeast, east, and south into its station at Sixth and Main Streets over its own viaduct described above. At present a local line of the Pacific Electric extends from the Arcade station past the electric company's station to the Edendale section. Unless an elevated spur from the Pacific Electric viaduct were extended into the Arcade Station as suggested, the inconvenient access to the viaduct and the lack of facilities at that point probably would cause many passengers transferring between the Arcade station and such lines of the Pacific Electric to go to the station at Sixth and Main Streets, and there transfer between the local and interurban lines of the latter. The local line mentioned does not reach without transfer the Pacific Electric's Hill Street station, the terminal for its lines to the west and northwest. The Santa Fe station is not served by the Pacific Electric; most of the passengers transferring between the two sys-

tems would have to make use of the local street cars or cab service. The street car lines serving the Santa Fe station do not reach without transfer the station of the Pacific Electric at Sixth and Main Streets.

The present main line of the Pacific Electric to points northeast of Los Angeles, including Pasadena, Pomona, and San Bernardino, passes the Plaza station site on Aliso Street. The lines to the south do not pass the site, although under the present surface track arrangements special trains coming therefrom could reach it, but would cross many busy streets at grade. Provision could easily be made to bring a local line of the Pacific Electric to the Plaza station grounds or to detour the Aliso Street line through the station. The former would be feasible even though the Pacific Electric constructed its proposed viaduct to the east bank of the river. Use of such local line by interurban passengers would generally involve a transfer at the Pacific Electric station. Under either the Plaza or Arcade plans, Pacific Electric passengers from the west and northwest using its Hill Street station would have to transfer to a local line.

4. *Convenience.*—One of the principal arguments for a union station as contrasted with separate stations is that it promotes to a greater extent the convenience of passengers and makes possible the handling of baggage, express, and mail in one location. The proportion of travelers reaching Los Angeles who transfer immediately to another railroad is not as large as at many cities. Most travelers who come into Los Angeles from a distance stop in the city or its environs for a short time at least, and for them a union station is less important. Applicants presented estimates that 97 per cent of Los An-

geles passenger traffic is terminal rather than interchange traffic. For the first 10 days of June, 1923, the Santa Fe, the Salt Lake, and the Southern Pacific brought into Los Angeles 41,030 passengers, of whom 824, or slightly over 2 per cent, transferred from one station to another. This does not include persons stopping over in Los Angeles, passengers transferring at Los Angeles but traveling on separate tickets to and from that point, or passengers transferring to and from the Pacific Electric. Since the war period the Santa Fe through service between the east and San Francisco has been much restricted, and its through service between San Diego and Los Angeles, in Southern California, and San Francisco has been discontinued. As a result there are undoubtedly many more transfers between the Santa Fe and Southern Pacific at Los Angeles than formerly. The California Commission's engineers' investigations indicated that probably 10 per cent of the passengers carried by the steam lines normally transferred from one road to another. This does not include passengers transferring to or from the Pacific Electric.

Complainants regard the Arcade station itself as less convenient for passengers than the Plaza plan station. To reach trains at the Arcade station, passengers must go through the waiting room down a 15 per cent incline to the subway 10 feet below, and up by a similar incline to the station tracks. Incoming passengers go down into the subway and thence out by an 18 per cent incline through the building to the sidewalk. At the station proposed for the Plaza, if the ticket office were on the lower level, passengers could come in from Alameda Street and go to trains with an ascent of 8 feet in the

case of impaired clearance at the Alameda Street bridge, or an ascent of 13 feet and a descent of 5 feet in case full clearance were allowed. All ramps would be on 10 per cent grade, which is standard for such construction. Congestion of passengers arriving from trains would be greatly reduced by the two-level station. Street cars and autos could be reached from the upper level, and taxi stands and autos from the lower level.

The possible consolidation of baggage, express, and mail facilities through unification of passenger terminals would be much more convenient for the public than the maintenance of separate facilities at more than one station. The handling of baggage at a union station would be a convenience to passengers, and would result in an economy. Consolidation of mail facilities near the central post office in the Federal Building, which is close to the Plaza, would be of substantial benefit in handling the mails. In summing up the advantages and disadvantages of the sites considered by them for a union station, the engineers of the California Commission in their report stated:

> The Southern Pacific site stands first with regard to the collection and distribution of baggage, mail and express. This is because the origin and destination of the express matter (by far the largest item among these three), lies in a district closer to the Southern Pacific Station.

5. *Segregation of passenger and freight traffic.*—Under either the Plaza or Arcade Plans all freight traffic, except night switching of industrial freight, would be taken off Alameda Street and diverted to the river banks. Under the Arcade Plan both passenger and freight traffic of the Southern Pacific and the Salt Lake would be handled on

the east bank of the river, and Santa Fe freight and passenger business would remain on the west bank. If the Plaza Plan is effectuated, all passenger traffic except that moving over the El Paso line will be routed along the west bank of the river. It is probable that considerable freight business would be so routed, although the east bank well could be used for some freight movements. At present the Pacific Electric hauls through the city no freight moving between its southern and northeastern branches, but delivers it to the Southern Pacific for transfer by way of Alameda Street. The northern transfer yard is at Macy Street, and the carrying out of the Plaza Plan would necessitate its abandonment. A substitute service could apparently be had in connection with the Salt Lake as a switching line between Alameda Street and the Elliott Street transfer, but if the Southern Pacific should divert its freight traffic to the east bank, as proposed under the Arcade Plan, it could itself perform the service.

The industrial district of Los Angeles is largely west of the river, and is reached by many spurs extending from the Santa Fe line westerly to the industries. Recognizing the possibilities this situation offers for unifying certain freight facilities on the west bank of the river, the California Commission's engineers in their report recommended the establishment of a union less-than-carload freight station at the Santa Fe terminal site. The order of the California Commission for the establishment of union terminals did not include provision for any unified freight facilities. The California Commission engineers also noted the greater possibility of segregating passenger and freight operations on opposite sides of the river under the plan for a union station at the Arcade

site than under the Plaza plan there considered. Under the Plaza Plan there would necessarily be some conflict in passenger and freight operations on the west bank of the river, though this would be minimized if provision were made for freight operation on the east bank.

6. *Station site as barrier to city traffic.*—Complainants make comparison of the Arcade and Plaza Plans with respect to the extent to which the station grounds and track layout obstruct traffic or act as a barrier between related sections of the city. This comparison favors the Plaza site.[8]

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(8) The district between Alameda Street and the river is largely industrial. There is a heavy trucking traffic between it and that part of the city west of Central Avenue. In addition there is a heavy vehicular traffic over the Fourth Street viaduct between the east and west sides of the city. The Arcade Station blocks Fifth Street completely. Under applicant's plan undesirable crossing situations would remain at Fourth and Sixth Streets. To accommplish the depression of Sixth and Alameda Streets necessary to the viaducting of the approach to the Arcade Station grades of 3 per cent would be introduced. An industry track from north on Alameda Street would extend south down one of these grades across Sixth Street and would turn down south into the Los Angeles Market. As above noted, one track other than those on Alameda would remain across Fourth Street north of the station to provide access to the railway-mail post office, express yard, and the plant of the Los Angeles Ice & Cold Storage Company. Defendants estimate the movements over this track to the railway-mail post office at 8 to 10 a day. The same track connects with the tracks on Alameda Street near Third Street and, together with a connection between the Alameda Street tracks and the throat of the yard, would provide a means of running around the station yard without blocking the throat tracks. To the extent that switching at the railway-mail post office, express yard, and cold-storage plant from time to time involved moving cuts of cars over the Third Street switch connection, or to the extent that this facility might be used to run around the station yard, the heavy traffic on Third Street would also suffer interference. There are no streets crossed at grade at the Plaza site, except for the industrial freight line, which would remain on Alameda Street in either case. The station site would lie between two traffic arteries, but would not obstruct traffic, as there is comparatively little between the sections immediately north and south thereof.

Upon exception and argument applicants state that under their plan the handling of through Southern Pacific freight trains on the east bank of the river will eliminate the grade crossings at North Main and North Spring streets by its line on Redondo Street. The same arrangement is equally possible under the Plaza Plan. Indeed, applicants' estimate of costs for the latter plan provides for an east-bank freight line.

7. *Consonance with civic plans.*—The Plaza harmonizes with the civic plans of Los Angeles much more closely than does the Arcade Plan. The city through its Planning Commission undertook a study to determine the proper location for its administration or civic center. The report of that Commission found that the Plaza is the center of population of the Los Angeles metropolitan area, that it is the geographical center of that area, and that it is the point of convergence of the largest number of streets and highways. The Planning Commission recommended that the civic center be established in the area bounded by First Street on the south, Los Angeles Street on the east, Sunset Boulevard on the north, and Hill street on the west. The Plaza proper lies within this area, and the Plaza station here proposed would adjoin the area on the east. The City Council approved the report, and has proceeded to acquire the necessary lands within the described area for the erection of public buildings and the relocation of Spring Street and North Broadway. In June, 1923, the voters of Los Angeles by an overwhelming majority authorized the location of a proposed new city hall in the area just described in preference to a location south of Ninth Street, west of Los Angeles street, north of Washington Street, and east of Grand Avenue. Within

the civic center area at the present time are several public buildings, including the County Courthouse, the Hall of Records, an additional building used for county offices, the City Hall Annex, and the Federal Building. A new Hall of Justice is being erected within the area at North Broadway and Temple Streets. Public authorities own other lands within the area, and still more land therein is now being condemned for various public purposes. The Arcade Station is about a mile distant from the civic center.

The character of improvements in the Plaza district, particularly near the site of the proposed Plaza station, is now not as good as at the Arcade station site. A large foreign population lives near the Plaza, chiefly Mexican and Mongolian. Under the proposed Plaza Plan the acquisition of the necessary land would dispossess most of the Mongolians in that immediate district. A station on the Santa Fe site would not harmonize at all with the city's civic center plans. This site is next the river, surrounded by an industrial district. It is also about a mile from the civic center.

8. *New money costs and total investment.*—The California Commission sought to prove that the net new money required for a union station at the Plaza need not exceed that necessary to carry out applicant's plan and to provide separate and adequate facilities for the Santa Fe. It endeavored to establish that if such a union station were built the total investment in passenger-station facilities would be less than if a joint station were built for the Southern Pacific and the Salt Lake and a separate station for the Santa Fe. The California Commission's computations are summarized in the following table. Some items

which would be the same under either plan, with the exception of the Southern Pacific coach yards, are not included.

Description	Applicant's plan	Santa Fe	Total	Plaza
1. Passenger station and facilities	$1,483,059	$1,500,000	$2,983,059	$6,476,000
2. Coach yards (both plans)	416,780	.....	416,780	416,780
3. New trackage and connections	1,590,380	120,000	1,710,380	326,600
Subtotal, 1 to 3	3,490,219	1,620,000	5,110,219	7,219,380
Net salvage value of release property:				
Southern Pacific station site	.....	.....	.....	[1] 3,000,000
Santa Fe station site	.....	.....	.....	[1] 950,000
Net	.....	.....	5,110,219	3,269,380

[1] Credit.

Taking the same subtotals and adding thereto the estimated value of the existing station facilities, the State Commission computes the total investment in passenger-station facilities as follows:

Description	Applicant's plan	Santa Fe	Total	Plaza
1-3. Subtotal	$3,490,219	$1,620,000	$5,110,219	$7,219,380
5. Existing station facilities	4,805,000	950,000	5,755,000	.....
Total	8,295,219	2,570,000	10,865,219	7,219,380

In their brief, applicants have revised these figures, with the result that their estimates of the new money required are $3,990,219 for the separate facilities, as against $10,880,180 for the Plaza Plan, and their totals for investment in station facilities are $8,690,219 for the separate facilities, as against $11,617,180 for the Plaza Plan.

Some of the points of divergence with the State Commission's estimates will be noted. There is no dispute as to the propriety of applicants' items 1, 2, and 3, nor as to item 2 under the Plaza Plan. Applicants' revision includes but $500,000 for separate station facilities for the

Santa Fe. There is nothing of record to support this figure other than the unsworn statement of counsel for the Santa Fe at the hearing and on brief that this amount would be sufficient to provide it with adequate station facilities. The figure of $1,500,000 used in complainants' computation as the cost of a separate Santa Fe station was named by an engineer of the California Commission as the assumed amount the Santa Fe would expend in providing such facilities. He also testified that at present prices the cost of facilities equal to those at the Arcade Station would run well over a million dollars. The Arcade Station contains in the wings of the building 300,000 cubic feet of office space which the Santa Fe contends is unnecessary to an adequate station. If the Santa Fe builds a separate station it will probably expend at least the amount estimated by complainant, but for present purposes we may assume that it would provide station facilities equal to those at the Arcade Station minus the office space. Making suitable deduction for such space, the record warrants the use of $1,000,000 as the reasonable cost of separate and adequate Santa Fe station facilities.

Applicants' computation omits $120,000 for double tracking the Santa Fe from North Broadway to Aliso Street on the ground that such construction would be unnecessary if the Plaza Plan is not carried out. Unless the west approach to the proposed Macy Street viaduct is extended to pass over the Santa Fe passenger line between Alhambra Avenue and Aliso Street, the track construction contemplated by this item will have to be made regardless of which station plan is effectuated. The Santa Fe states that the item relates to grade separation only and is no proper part of the expense of

a passenger station, whether union or separate. We will omit that item from both the Plaza and separate station plan estimates. Defendants' figures make several additions to Plaza item No. 1, as follows:

Additional allowance for engineering and contingencies	$165,000
Additions to station building	190,000
Division offices	190,000
Express building	200,000
Increase in land-value estimate	2,902,800
Total	$3,647,800

Applicants' cost figures for a joint Southern Pacific-Salt Lake station include an item of 27 per cent of construction costs, to cover 5 per cent for engineering, 7 per cent for interest, and 15 per cent for contingencies. The State Commission has allowed 20 per cent for these items. To provide a comparable basis for comparison defendant would increase the allowance by 7 per cent of $2,353,300, the construction costs as estimated by the State Commission, or $165,000. Applicants' revised estimate adds $190,000 to the State Commission's estimate of $1,500,000 for a station building. This is based upon a cost of $120,000 for the concourse between the head house and the stub end of the tracks, plus $30,000 to cover exterior features such as ramps and subway construction in Alameda Street, and an allowance of 27 per cent of such additions for engineering, interest, and general contingencies. The head house of the station contemplated would be of steel-frame construction, similar in type to the head house of the Arcade Station, and would be 400 feet in length, 120 feet wide, and 60 feet in height. The Commission estimate of 50 cents per cubic foot would produce a cost of $1,440,000 for the head house. Assuming that the concourse and exterior features would cost

$150,000 additional, such amounts would be amply taken care of by the $60,000 balance of the estimate and by the allowance for engineering, interest, and general contingencies, which as increased amounts to $405,000.

The present Arcade Station contains 300,000 cubic feet of space used for division offices. The Plaza Plan apparently makes no such provision. Assuming like space were provided in the Plaza station building at a cost of 50 cents per cubic foot plus 27 per cent for engineering, etc., complainants' figures should be increased $190,000 as indicated.

The California Commission's figures contain no provision for an express building, apparently on the theory that it is not defendants' duty to provide that facility. But the plan is not comparable to the Arcade Plan without an express building. Whether defendants or the express company build it, the value thereof would still form a portion of the base on which a fair return should be paid by the public either in railroad or express rates. Defendant's estimate is that $200,000 would be necessary for this purpose.

The land required for the Plaza Plan station would have an area of 1,780,286 square feet. The cost, according to the State Commission's figures, would be $2,597,200.[9]

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(9) This apparently consists of a base figure of $1,954,480, plus approximately 18.6 per cent for cost of acquisition and 12 per cent of the total for interest during construction. The base figure represents twice the assessed value for the assessment year 1924-25. Assessments of land in Los Angeles County are customarily made at 50 per cent of the estimated fair market value. The testimony of the deputy county assessor, who for years has made the assessments on property in the industrial district, including the Plaza site lands, indicates that the fair market value of the land at the time of the hearing was $2,017,365. A witness

A consideration of the land values of $2,017,365 and $3,490,500 on the basis of the unit prices named by the deputy county assessor and those used by defendants, respectively, persuade us that under the circumstances the former is too low and the latter too high. An average of the two, $2,753,932, would be a fairer figure. Increasing this amount by 25 per cent, to cover cost of acquisition, and adding 12 per cent to the total for interest during construction, the resulting figure would be $3,855,505. The evidence of record justifies the conclusion that this amount should be allowed as the probable future cost of the station lands under the Plaza Plan.

In revising the State Commission's figures defendants have added to Plaza item 3 $750,000 to provide freight trackage on the east bank of the river for the Southern Pacific substantially similar to that under applicants' plan. Assuming that Southern Pacific freight would be so

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produced by defendant testified to much lighter land values in the Plaza district, and said that the asking price of land therein would be increased 25 per cent if a station in that section were ordered. On this basis defendants claim the cost of the necessary lands would be $5,500,000, or $2,902,800 in excess of the amount estimated by the State Commission. Defendant's figure is based upon the assumed acquisition of an area of 2,300,000 square feet, which is larger than that contemplated by the Plaza plan. Applying defendants' unit prices to the proper area, a base cost of $3,490,500 results. An allowance for assumed increase in asking price other than as covered in the allowance for cost of acquisition does not seem proper. At the argument the parties stipulated that the Southern Pacific has recently acquired title to the so-called Hanchett lands, about 25 acres of which would be necessary for a portion of the station site under the Plaza plan. These lands were acquired in connection with the acquisition of the El Paso & Southwestern system. Counsel for the Southern Pacific at the argument stated that the El Paso & Southwestern paid $6,250,000 for the Hanchett lands. The report of the California engineers indicates that these lands have an area of 1,500,000 square feet, or approximately 34.4 acres. The record with respect to this transfer does not enable us to accord much weight to the figures quoted.

handled on the east bank rather than on the west bank at less cost for construction, the costs comparable with those shown under the applicants' plan would not amount to $750,000. The only construction covered by applicants' item 3 is of Salt Lake units 1 and 2 and Southern Pacific unit 2. The last two units, with costs of $86,935 and $326,498, respectively, would be required under the assumption made. But the balance of the $750,000 would not be required for merely that portion of Salt Lake unit No. 1 necessary for freight service. So far as can be determined from the data of record the only construction required would be the double tracking of the Salt Lake line from Alhambra Avenue to a point midway between Macy and Aliso Streets and the provision of double-track turnouts at the south leg of the Alhambra wye and at Elliott Street. Apparently $50,000 would cover these costs, making a total of $463,433 for the east-bank freight line construction.

Revising the State Commission's estimate in line with the conclusions reached, we produce the following results:

Description	Applicant's plan	Santa Fe	Total	Plaza
Passenger station and facilities (item 1)	$1,483,059	$1,000,000	$2,483,059	$6,356,000
Increased engineering, etc.	.....	.....	.....	165,000
Division office space	.....	.....	.....	190,000
Express building	.....	.....	.....	200,000
Increased land allowance	.....	.....	.....	1,258,305
Coach yards (item 2)	416,780	.....	416,780	416,780
Trackage and connections (item 3)	1,590,380	.....	1,590,380	206,600
East bank freight line	.....	.....	.....	463,433
Subtotal	3,490,219	1,000,000	4,490,219	9,256,118

Applicants' revision of the California Commission's statement reduces to $737,000 the item of $3,000,000, which represents the salvage value of property at the Arcade site to be released from passenger service in the event

the Plaza plan is carried out. This reduction is based upon the anticipated reversion of a portion of the Arcade site, known as the Wolfskill tract, which was given to the Southern Pacific by grant deed, subject to the condition that it should be used for a general railroad passenger station and not otherwise and should revert to the grantors upon breach of the condition. It is well established that the right of a carrier or the public authorities to make such change in the location of a railroad station as may be required to provide reasonable and adequate service can not be controlled or prevented by private contract or by the fact that private citizens in the expectation of the continuance of a station at a particular place have made donations of land or money. 33 Cyc. 143, and cases there cited. A condition subsequent in a deed, providing for the reversion of real property in case any certain act is done or omitted, is inoperative where the doing or omission is compelled by public authority.[10] The reduction of the item mentioned is therefore not justified. But, even assuming reversion, the basis for the figure of $737,000 used in applicants' brief does not appear. The area of the Wolfskill tract is 81 per cent of the total area of the Arcade station grounds, but its value based on 1918 figures is 62.4 per cent of that of the total area. If the total salvage item of $3,000,000 be apportioned on the basis of relative land values as above, the value of the non-Wolfskill property would be $1,128,000. But the station building, esti-

(10) 18 *C. J.* 375; *Scoville v. McMahan*, 62 Conn. 378; *Doe dem. Marquis of Anglesea v. Church Wardens of Rugely*, 6 Q. B. 107; 2 *Washb. Real Prop.* 15; *Fidelity Ins. Trust & Safe Dep. Co. v. Fridenberg*, 175 Pa. St. 500; and *German E. P. Congregation v. Schreiber*, 277 Mo. 113.

mated to have a salvage value of $159,000, is not located upon the Wolfskill tract. The record does not admit of determining with exactness the value of the property not effected by the reversionary clause. But if the value of the land alone be taken on the basis of $5.50 per square foot as testified by the deputy county assessor and apportionment is made on the basis of the relative values in 1918, the value of the non-Wolfskill lands is $1,337,719. The record amply warrants the conclusion that even if the anticipated reversion should occur, salvage values of at least $1,250,000 would remain.

The item of $950,000 representing the value of Santa Fe station lands that would be released from passenger service if a union station were built at the Plaza, is omitted from applicants' revision of the California Commission's comparative statement of new money costs. This is on the theory that these lands would not be sold, but would be retained in railroad ownership for use in freight service. The station grounds front on Santa Fe avenue and adjoin the freight yards. The less-than-carload freight station of the Stanta Fe is on the opposite side of Santa Fe avenue somewhat south of the present station building. These lands if released would be very desirable as industrial property. But assuming that the Santa Fe would retain them for freight purposes, their value would still be a proper deduction in estimating the new money costs of union passenger station facilities at the Plaza. The virtual purchase of additional lands for freight service should not be counted as a cost of passenger facilities in making such comparison between the different projects.

Defendants' computations reduce complainants' figure of $4,805,000, representing the value of existing station facilities of the Southern Pacific to $3,784,000. The latter figure takes the salvage item of $3,000,000 as the value of the land, and adds thereto for facilities the 1916 valuation figure of $784,815 claimed by the Southern Pacific. The item of $3,000,000 has not been fully explained of record, nor its elements revealed, but apparently it is based upon the assumption that the Southern Pacific station and facilities would be demolished and that the value of the land would be much less for industrial sites than its value as a single piece for a station site. Present values are much higher than those of 1916. If present-day values are taken as the value of these properties in railroad use, the figure of $4,805,000 does not appear excessive in the light of the evidence of record. At one of the hearings before the California Commission in 1917 the Southern Pacific claimed a value of $5,000,000 for the facilities between Fourth, Sixth, Central, and Alameda streets. Revising the State Commission's cost comparisons on the basis of these conclusions, the results are as follows:

Description	Applicant's plan	Santa Fe	Total	Plaza
Subtotal	$3,490,219	$1,000,000	$4,490,219	$9,256,118
Salvage value of release property (item 4):				
Southern Pacific station site	.....	.....	.....	1 3,000,000
Santa Fe station site	.....	.....	.....	1950,000
New money required	3,490,219	1,000,000	4,490,219	5,306,118
Subtotal	3,490,219	1,000,000	4,490,219	9,256,118
Existing station facilities (item 5)	4,805,000	950,000	5,755,000	.....
Total investment, property devoted to passenger terminal uses	8,295,219	1,950,000	10,245,219	9,256,118

1 Credit.

One other element of cost should be noted. The Plaza plan makes provision for accommodation of additional lines of railroad and for many additional trains with but slight expenditures. As indicated above, the approach-track arrangement under the Arcade plan would need amplification if the number of trains in and out should substantially exceed 120 per day. Applicants' plans provide for construction, if and when necessary, of two additional approach tracks on trestles from the east bank of the river. The cost of such construction would be practically equivalent to that of the proposed viaduct, estimated at $2,087,322. If ultimate cost be considered and this item included, the additional investment required under the Arcade plan would amount to approximately $6,577,500, as against about $5,306,000 under the Plaza plan, and the total value of property in passenger service would become about $12,332,500, as compared with approximately $9,256,000. With only the Southern Pacific and the Salt Lake in the Arcade depot, viewed by present conditions, it is not likely that expansion of the approach to four complete tracks across the river would become necessary for some years. It might sooner become necessary to construct two additional short approach tracks to facilitate station switching, long enough for any passenger train, but they would not require new bridges over the river. The record furnishes no satisfactory basis for determining the cost of such partial expansion.

The cost of passenger facilities under the carriers' plans as above estimated would need some revision if the Santa Fe should use the Arcade station in common with applicants. The cost of a separate station for the Santa

Fe would be eliminated, and provision should be made for connections with the Salt Lake at Hobart and at Humboldt street on the east bank of the river. The cost of these connections probably would not exceed $80,000. An additional express building with a floor area of 10,000 square feet would be necessary under this plan. Such a building would probably cost about $75,000. If a site were provided south of the present station auto park, the land would probably cost $80,000, not including land necessarily acquired but not needed for an express-building site. On this basis the new money cost would be about $3,725,000 with two approach tracks and $5,812,500 when two more such tracks should be added. Similarly the total investment would be $8,530,000 under the first assumption and $10,617,000 under the ultimate plan. If a viaduct for all four tracks were provided at the start, as would seem to be advisable if the Arcade station were converted into a union station, the new money cost and total investment would possibly be somewhat less than the ultimate figures shown. These figures do not include the cost of providing more accessible engine terminals and coach yards for the Santa Fe or better means of access from their present facilities.

9. *Expense of operation.*—The record contains some evidence bearing on the saving in operating expense under the Plaza plan. Most of such evidence does not relate to the specific Plaza plan now before us. One comparison is pertinent. Under the Arcade plan, according to an engineering witness, locomotives would have to develop 6,755,570 foot-tons daily as against 4,885,700 foot-tons under the Plaza plan. On this basis the witness estimated that 38 per cent more fuel would be used in the operation

of passenger trains within the terminal under the Arcade plan than under the Plaza plan. It is clear that the movement of trains and equipment into and out of the Arcade station over the proposed viaduct would be a much more expensive operation than would be encountered at the Plaza plan station.

10. *Period of construction.*—Applicants state that the Arcade plan could be carried out within a period ranging from 18 months to two years. Completion of a union station at the Plaza would necessarily take somewhat longer, because of the necessity of first making detailed plans. There might be further delay as a result of litigation. Three years would probably be required to carry out the Plaza plan.

11. *Elimination of Pacific Electric grade crossings.*—The operation of Pacific Electric cars and trains on the city streets now creates a more hazardous if not a more inconvenient condition than any caused by the operation of steam trains at grade. As indicated, if the Southern Pacific-Salt Lake plan is approved, the Pacific Electric will construct an elevated road from its Sixth street station to the east bank of the river and to its right of way at Fourteenth street. Such construction would make possible the elimination by this carrier of 16,199 daily grade crossing movements at some 56 intersecting or connecting streets. The same construction would be possible under the Plaza plan, though not so probable, as arrangements would have to be made for the Pacific Electric to obtain the necessary right of way on the east bank, and such construction would divert most through trains from the Plaza location. The retention of the Aliso street line at grade would perpetuate numerous

grade crossings, though it would be possible to construct an elevated line from the river at Aliso street or from the proposed Plaza station at Aliso street down San Pedro street to the elevated line paralleling Sixth street. In brief, under the Arcade plan the Pacific Electric grade crossings would be greatly minimized within a reasonable construction period. Its right of way from Main street to the river is now 90 per cent complete. Under the Plaza plan similar elimination could be had though not now provided for, but its accomplishment would probably be longer delayed.

Financial Ability of Carriers.

The Southern Pacific plans to finance its portion of the costs of the Arcade project as set forth in the applications out of current funds, without the present issuance of securities. Later it may seek our approval to capitalize the investment. Similarly the Salt Lake intends to meet its portion of the cost of such plan out of current funds or out of advances made from time to time by the Union Pacific Railroad Company or the Oregon Short Line Railroad Company, or both, which together own the entire capital stock of the Salt Lake. Subsequently, the Salt Lake or its controlling carriers may ask approval for the permanent financing of such expenditures, together with others made in recent years.

Income balances of defendants transferred to profit and loss are as follows for the calendar years enumerated:

Carrier	Balance
Southern Pacific Company:[1]	
Year 1921	$27,521,526.98
Year 1922	24,902,729.72
Year 1923	30,012,397.42
Santa Fe:[1]	
Year 1921	19,303,898.33
Year 1922	18,627,018.71
Year 1923	21,778,539.31
Salt Lake:	
Year 1921	[2]1,266,117.27
Year 1922	[2]1,323,676.48
Year 1923	937,165.56

[1]The Southern Pacific charges its dividend payments to profit and loss, while the Santa Fe charges them to income.
[2]Loss.

Of the Southern Pacific figure for 1921, approximately $26,000,000 arose through the disposition of oil properties. In 1922 the Santa Fe received $17,000,000 in a settlement with the United States Railroad Administration.

None of the three carriers has any outstanding notes payable. The current assets of the Southern Pacific include $17,000,000 in cash; of the Santa Fe, $25,000,000; and of the Salt Lake, $315,000. The investments of the Southern Pacific include about $30,000,000 in government bonds, and of the Santa Fe some $32,000,000 in government bonds and notes. The Salt Lake suffered deficits in 1921 and 1922, but appears to be growing stronger. Its stocks and bonds are all owned by the Union Pacific or affiliated companies, and are not on the market. The Union Pacific has no notes outstanding, owns $38,000,000 of government bonds and other government securities and has cash assets of $12,000,000. The Southern Pacific, Santa Fe, and Union Pacific have been in a strong financial condition since 1917, and are now in such a condition.

Their bonds are selling on favorable terms, and their stocks command a good price. The record indicates that neither the Southern Pacific nor the Santa Fe would experience any financial embarrassment if called upon to finance a capital expenditure of $10,000,000 for new passenger-terminal facilities in Los Angeles, and that the Union Pacific would not experience any such embarrassment in assisting the Salt Lake to bear its share of a union passenger terminal development entailing such a cost. At the argument counsel for applicant stated that any order we might enter in these proceedings would not impair their financial ability to perform their duty to the public.

An offer by a former owner of lands in the Plaza district to finance a union depot if built in that section was received at the hearing.

SUMMARY.

The service afforded by each of the present passenger stations of the Salt Lake and the Santa Fe is unreasonable and inadequate, and those carriers are under the immediate necessity of, and contemplate, expending considerable sums of money in providing reasonable and adequate facilities in lieu of those now owned and used. The clearly established necessity of eliminating from Alameda street all railroad train service, except industrial freight-switching service, is undisputed. Such elimination of train service will force the Southern Pacific to provide other means of access to its Arcade station or to abandon that station and provide other facilities in its stead. Either course will be attended by the expendi-

ture of substantial amounts of money. The carriers named can provide reasonable and adequate station facilities and the expense involved will not impair their ability to perform their duties to public. This brings us to a resume of the advantages and disadvantages of the various plans for station facilities hereinbefore detailed.

The Arcade plan for a joint station for the Southern Pacific and Salt Lake, proposed in Finance Docket No. 3569, makes no provision for the Santa Fe and leaves it to provide separate facilities for itself. This plan has certain advantages and is subject to certain decided objections. The terminal planned would doubtless be adequate for the Southern Pacific and Salt Lake for a number of years, and any separate station which the Santa Fe might erect would doubtless be adequate for its needs and those of the public. Aggregating the separate Arcade station and a Santa Fe station, their accessibility by vehicles, street-car lines, and interurban lines is poor, though the Arcade station alone is not so deficient as respects street and interurban car lines. Considering the convenience to passengers and in the handling of baggage, mail, and express, the Arcade plan with separate Santa Fe station would be deficient. Segregation of passenger and freight routes on opposite sides of the river would not be possible under the Arcade plan as proposed. This objection standing alone is not serious, but the segregation would be preferable. The Arcade station would act as a barrier to vehicular traffic between the industrial district and the business district at Fifth street. To an appreciable extent the proposed arrangement would retard the movement of traffic at Fourth and Sixth streets and

possibly at Third street. The depression at Sixth street would affect travel on Alameda street.

Separate stations at the Arcade and Santa Fe sites do not fit in well with the civic plans of the city. The new money cost of terminal facilities would be approximately $4,500,000, and the total investment $10,500,000. To this should be added the cost of additional approach tracks as they become necessary. With only the Southern Pacific and the Sale Lake using the Arcade station, the full increase to four complete approach tracks would probably not become necessary for years, although some expansion might be needed in the not distant future. The operation of trains on a long viaduct and into the Arcade station on a descending curve, together with the necessity of maintaining coach yards and engine terminals at a considerable distance from the station, are undesirable, and will necessarily result in greater expense than would be incurred under a more desirable layout. Probably two years would suffice to complete erection of necessary facilities if the Arcade plan were approved. Numerous Pacific Electric grade crossings could be eliminated economically and expeditiously following approval of the Arcade plan.

Though applicants stated that the Arcade station plan could conveniently include the Santa Fe, they have made no provision for its inclusion, and the Santa Fe is unwilling to participate in the use of such a station. We do not have the details of such changes in the proposed facilities as would be necessary, or their costs. Such use of the station would apparently remove in various degrees several of the substantial disadvantages incident to the Arcade plan as proposed, although others might be intro-

duced thereby. With sufficient approach tracks the Arcade station could accommodate all three lines for a number of years. Though four complete approach tracks might not have to be provided immediately, some partial expansion of the proposed approach arrangement likely would be necessary, and probably at the start the viaduct should be built to accommodate four complete approach tracks. The narrowness of the site makes the Arcade station particularly dependent upon ample approach facilities.

Inclusion of the Santa Fe would improve the accessibility of the passenger facilities. A union station at the Arcade site would not be as accessible to vehicular traffic as either of the Plaza plans, and would be a little inferior as respects street car service. As respects interurban lines, the relative accessibility of union stations at the Arcade and Plaza sites depends largely upon what changes are made in the lines of the Pacific Electric and in the manner of operating its trains into and out of the city. The advantage in this respect would seem to lie with a union station at the Arcade site. This does not attempt to pass upon the relative merits of different terminal arrangements for such interurban lines.

As respects the convenience to passengers which would flow from a unification of terminals, a union station on the Arcade site would be as good as one at the Plaza, and in handling baggage, mail, and express would probably be more convenient.

The possibility of segregation of passenger and freight routes is greater under an Arcade union plan than under any other that has been presented. The net new money

cost of an Arcade union terminal based on the provision of a four-track approach and appropriate facilities would approximate $5,000.000,[11] and the total investment $11,000,000. Assuming only a partial expansion of the approach-track arrangement for the present the new money cost would probably not greatly exceed $3,500,000 and the total investment $9,500,000. The expense of operation would probably be somewhat greater under this arrangement than under the others. The other advantages and disadvantages of a joint station at the Arcade site would obtain with respect to an Arcade union station also.

Any union station erected in the Plaza district would be easily accessible from the main lines of the three steam roads, would be adequate to handle all their present traffic and would admit of ready and relatively inexpensive expansion as traffic developed. The accessibility by interurban lines would not quite equal that of a union station at the Arcade site. Except with respect to the collection and distribution of express matter, unification of passenger-terminal facilities at the Plaza would provide all the conveniences for the public afforded by a union Arcade station. If a union station were built at the Plaza, segregation of passenger and freight routes on opposite sides of the river would not be possible. Though segregation would be preferable, this would not be a serious objection. If an east-bank freight line were provided as in applicant's plan the passenger and freight routes could be so arranged as to prevent serious interference between cross lines of high-density passenger and

(11) Including $500,000 for necessary changes in the Santa Fe facilities and deducting the value of its site.

freight traffic. Except with respect to the station-approach bridge over Alameda street and the high viaduct for vehicular traffic across the river at Aliso street, a union station under the Plaza plan would not introduce bad crossing situations. It would not act as a barrier to traffic between sections of the city. The importance of Alameda as a trucking street to the industrial district would diminish if the Southern Pacific should cease to maintain its freight station adjacent to the river station yards.

A union station at the Plaza would harmonize with the civic plans and desires of the city. If a union station were built at the Plaza under substantially the plan presented by the California Commission, the new money necessary to be raised, less the value of property released from passenger service, would be about $5,500,000. The total investment in passenger facilities under the Plaza plan would approximate $9,500,000. If consideration be taken of the acquisition by the Southern Pacific of the so-called Hanchett lands, about 25 acres of which would constitute approximately two-thirds of the Plaza station site, the new money cost would be reduced to approximately $3,500,000, and the total investment possibly increased to $12,000,000.[12]

Unification of passenger-terminal facilities at the Plaza could be arranged so as to result in certain operating

(12) The new money cost specified is computed on the basis of deducting as the value of such portion of the station grounds about one-half of the total cost of station lands as hereinbefore determined. The total investment figure just named is determined upon the assumption that the cost of the Hanchett lands to the El Paso & Southwestern was as stated upon argument by counsel for the Southern Pacific, and that the portion thereof necessary for Plaza station grounds should be assigned a proportionate cost of $4,500,000. In using this latter figure we make no assumption as to its reasonableness or propriety.

economies, but the extent thereof does not appear upon the record. With coach yards as planned for the Southern Pacific and Salt Lake and the existing Santa Fe coach yards, the expense of operation might be somewhat less than under the Arcade plan. Three years would probably be necessary to complete construction under this plan. If the Plaza plan rather than that proposed by applicants were carried out, the elimination of Pacific Electric grade crossings would be delayed, for the reason that there is no specific plan therefor in connection with the Plaza project.

It is clearly inferable from the record that the Santa Fe does not consider the Arcade site ample in size for the most convenient handling of the trains of all three carriers, and that so far as it is concerned operation into the Arcade station would be highly unsatisfactory. The Arcade site could be expanded by closing or deflecting important streets or by elevating the station yard. Assuming such expansion, the expenses of an Arcade station, either joint or union, would be considerably greater than for equally adequate facilities under some other plan. Adequate and convenient union passenger-terminal facilities can be provided in the Plaza area at a considerably less net new money cost than less adequate and convenient facilities under applicants' Arcade plan, and for approximately the same net new money cost as a union passenger terminal of more questionable merit on the present Arcade site.

In view of the right of the State, under the qualifications noted, to determine with respect to various plans for union-terminal facilities the question of adequacy and reasonableness, without clear basis we will not override

the determination of its authorities in that regard. The official commitment of the city in favor of a union station in the general area of the Plaza is also entitled to weight on the question of public convenience and necessity. If, upon investigation, it appeared that the State authorities were making unreasonable demands or placing undue burdens upon interstate carriers to the impairment of their ability to perform their duties to the public, it would clearly be our duty under *R. R. Comm. v. Southern Pacific Co., supra,* to refuse our consent to the consummation of the project. But where, as here, it appears that the carriers of their own necessities will in any event shortly expend considerable sums for adequate station facilities, and that after fair and painstaking investigation the State authorities have selected a general site as that required by the public convenience and necessity whereon for substantially the same amounts the carriers can provide adequate and convenient union-station facilities, we think the determination of such authorities should be entitled to considerable weight. The order of the Railroad Commission of California did not specify any particular site within the general area defined nor require a particular plan to be followed. The order required that the defendants submit plans for approval and, when approved, to build in accordance therewith. The defendants at no time made any effort to comply with the order. When the general outlines of the plan are formulated, a spirit of willingness to do and cooperate on the part of all concerned—carriers, city and State—will overcome many obstacles which now loom large. The record contains some reference to monumental stations and civic pride. The law aims to provide an adequate transportation sys-

tem with adequate and convenient facilities, and not to burden that system with facilities much more than adequate, or designed less to meet the reasonable requirements of the public than demands based chiefly on aesthetic considerations or advertising value. If such elements are to be provided for in measure beyond that incidental to reasonably adequate and convenient facilities of a character appropriate to the city served, the added expense may not be forced upon the carriers.

For orderly procedure it appears preferable that appropriate certificates in connection with the proceedings now before us should be issued subsequent, rather than prior to, the making of an order by state authority, but that the securing of favorable action on our part be made a prerequisite to the effectiveness of any state order. Such a procedure would enable us to pass upon a specific proposal and obviate the semblance of consenting in advance to construction the extent and expense of which could only be surmised. We think the expression of the Supreme Court in *R. R. Comm v. Southern Pac. Co., supra,* at page 346, to the effect that our certificate is, in the instances therein specified, "a condition precedent to the validity * * * of any order by the State Commission," is not inharmonious with these views.

Findings.

Upon a consideration of all the facts of record we find:

1. That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific

on Alameda street from College street to East Fifteenth street, inclusive, in the city of Los Angeles, Calif.

2. That neither the present nor future public convenience and necessity require or will require the construction or extension by applicants of new or existing main lines of railroad in the city of Los Angeles, Calif., as described in the application in Finance Docket No. 3569.

3. That the present and future public convenience and necessity require and will require *(a)* the extension by defendants of their respective main lines of steam railroad in the city of Los Angeles, Calif., so as to reach and properly serve any union passenger station and terminal within that portion of said city bounded by Commercial street, North Main street, Redondo street, Alhambra avenue, and the Los Angeles River, which they or any of them may construct and establish in accordance with a lawful order of the Railroad Commission of California, and (*b*) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal.

4. That the extensions referred to in the preceding paragraphs are reasonably required in the interest of public convenience and necessity, and that the expense involved therein will not impair the ability of defendants to perform their respectice duties to the public.

5. That, in addition to the abandonment of service on Alameda street as above authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respec-

tive main lines of steam railroad in the city of Los Angeles, Calif., or of the operation of all or any portion of the present interstate train service thereon as may be incidental to the rearrangement of passenger and freight routes, of tracks and of terminal facilities, made necessary or proper in connection with the construction and establishment by defendants, in accordance with a lawful order of the Railroad Commission of California, of a union passenger station and terminal within that portion of said city described in paragraph 3 above.

6. That the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the city of Los Angeles, Calif., as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station and terminal as defendants or any of them, in accordance with a lawful order of the Railroad Commission of California may construct and establish in that portion of said city described in paragraph 3 above, is in the public interest and is practicable, without substantially impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business.

An order will be entered denying the appplication in Finance Docket No. 3569. We are not advised what action, if any, the Railroad Commission of California will take in connection with these matters, and under the existing circumstances we will issue no certificates or further orders at this time. We will retain jurisdiction of No. 14,778 and Finance Docket No. 3556 for the purpose of making such further findings and orders and issuing such certificates as the record warrants. The find-

ings and order now made are based upon the present record and upon the plans presented to us. If, in the development of a union passenger terminal plan, the carriers or the Railroad Commission of California evolve a plan considerably more extensive than, or materially different from, a plan for a station within the Plaza area as here considered to be in the public interest, our ultimate findings as to the public convenience and necessity, and as to impairment of the carrier's ability to handle their own traffic and to perform their duties to the public, will of course be based upon a consideration of those facts rather than upon the present record.

HALL, *Commissioner*, dissenting:

I am not prepared to take part in selection of sites and approval or disapproval of plans for railway structures, whether bridge, tunnel, or terminal, all over this broad land. I find nothing in the interstate commerce act which lays upon us any such duty. Certainly no one who participated in framing the provisions of that act as to certificates of public convenience and necessity had union stations in mind. If he had, he was an adept in the use of language to conceal thought.

In these proceedings we have before us an application and a complaint.

The application is by two carriers who seek from us a certificate of public convenience and necessity to the extent that it may be requisite for developing the passenger station of one into the joint station of both, with such extension or construction of line and abandonment of other line as may be appropriate to that end.

The complaint is by Los Angeles, and in effect, by the State Commission. They allege no violation by the

defendant carriers of any provision of the interstate commerce act. Possibly their complaint should be regarded as an application under paragraphs (18) to (20) of section 1, although I do not think so. Ostensibly it is a complaint under paragraph (21). This distinction at least may be drawn between the application and the complaint; whatever their nature or their sufficiency in other respects; the carriers, as instrumentalities of interstate commerce, seek such authority as we may grant under these paragraphs to enable them to do something. That "something" is to make their transportation facilities and service more nearly adequate for the needs of the public using them.

The complainants come here for such authority as they may need, not to do something, but to require the carriers to do something. That "something" is to construct and maintain a union passenger station, which none of the carriers wants, on a site not of their selection, reached by none of their rails. Neither the city nor any civic body or citizen offers or proposes to contribute anything in land or money to that end. If this complaint be an application under paragraphs (18) to (20), how shall we construe the lack in those paragraphs of even a hint at compulsion? They provide for restraints, or permissions, or both. It is only in paragraph (21) that the power to require appears, and there it is confined to car service, as the term is used in the act, and to extension of carriers' lines.

I am in accord with the construction placed on these paragraphs by the majority report. I merely stress the difference in attitude of the applicants and the complainants before noting my first ground of dissent. This

is that the application of the carriers, the only parties before us who propose to do something, is denied.

Plainly they propose a better service than they now afford to the traveling public, a better utilization of property already dedicated to that service. It is their right and their duty to do both without authority from us. But to secure the full benefit of their proposal extension of some main line and abandonment of other main line is necessary. For that they are here. Why should we deny them? We would not if the complainants were not here also. I submit that carriers serving the public with property already devoted to that service should not be restrained from bettering their service because others charged with no such responsibility devise or approve or prefer plans for a substituted service on property which the carriers must go out and acquire at cost in excess of value.

Incidentally the carriers' proposal includes elimination of practically all grade crossings of the Pacific Electric lines in Los Angeles. That feature alone is a contribution to public safety and convenience, if not necessity, which merits and receives the hearty approval of everyone concerned in these proceedings.

My second ground of dissent is the grant, in so far as here made or forecast, of certificates of public convenience and necessity for a union station and for such extension of lines and disuse of other lines as may be incident to its construction and use. There is no magic in unification of passenger terminal facilities. There may be detriment to the traveling public far outweighing the anticipated benefit to Los Angeles, and our concern is, or should be, for the public served rather than for the fruition of civic plans.

Los Angeles is even greater in area than in population. Must those who come and go by rail all pass through one gate or may they have their choice of several? The record, as reflected in the report, gives no convincing answer to this question. The public convenience, the public necessity, both are to be considered and served if and when our certificates issue in respect of matters within our competency. The union station is not essential to a civic center, as experience has shown. Without entering into details of the Plaza and other plans, it may be noted that the present estimates call for investment of many millions of carrier earnings in property on which no earnings will ever be made, deprive the carriers to that extent of resources now available in time of need, and render useless for carrier purposes the terminal properties in which their investment was long since made on a lower basis of cost.

Any requirement by public authority that carriers invest their capital or earnings in unproductive property beyond what is clearly needed for performance of their public service is a requirement which lessens their ability to properly serve the public. It would seem that the new outlay, by utilization of aerial rights over the station properties or otherwise, could be made to yield compensating return and that the city and the carriers might and should work out in friendly cooperation some satisfactory solution of the problems here presented.

I am authorized to state that Commissioner Cox joins in this dissent.

Commissioner Woodlock did not participate in the disposition of this case.

Appendix 1.

Lines of Railway of the Defendant Carriers.

The coast and valley routes of the Southern Pacific Railway connecting Los Angeles with San Francisco and the Sacramento and San Joaquin valleys, unite at Burbank, about 12 miles north of the Los Angeles station, and extend southerly along the east bank of the Los Angeles River to its juncture with the Arroyo Seco, which drains the territory to the northeast in the vicinity of Pasadena. Here the line crosses to the west bank of the river, and continues southerly along it to the North Broadway viaduct. Passing under the viaduct the line leaves the river and proceeds southwest along North Spring street to the northern end of Alameda street, thence southerly along the latter street to the Arcade passenger station just west of Alameda street between Fourth and Sixth streets. The Sunset or El Paso route approaches from the east and crosses the Los Angeles River along Alhambra avenue and turns south into Alameda street at North Main street, a short distance south of the north end of Alameda, and proceeds southerly from thence to the station as do the trains from the north. South of the station the Southern Pacific occupies Alameda street to the southerly boundary of the city with its line to San Pedro and Santa Ana.

The Southern Pacific has three principal freight yards at Los Angeles. The new classification yard adjoins its main line east of the river and north of the Arroyo Seco, its Midway yard parallels the main line on the west bank of the river between the Arroyo Seco and the North Broadway viaduct; and the River station yards are northwesterly of and parallel with the main line along North

Spring street between the North Broadway viaduct and the north end of Alameda street. The Southern Pacific coach yards are on Alameda street near Seventh street, and its engine terminals on the east bank of the river just south of Alhambra avenue. Freight from north of Los Angeles destined through for points east moves from the yards southwesterly along North Spring street to Redondo street and thence turn easterly into Alhambra avenue.

The main line of the Atchison, Topeka and Santa Fe from the east through Pasadena follows the Arroyo Seco and crosses to the west banks of the Los Angeles River just north of North Broadway viaduct. Passing under, it proceeds southerly along the west bank of the river across Alhambra avenue and Macy and Aliso streets at grade to its station just south of First street. For most of the distance south of Alhambra avenue the passenger line is a little distance from the river. This results in the Santa Fe maintaining two grade crossings at Macy street and two at Aliso street. An alternative route from San Bernardino, used principally for eastern freight because of more favorable grades, joins the San Diego line at Fullerton, and enters the city from the southwest. This line crosses the river south of Butte street and follows north along the west bank of the river to the station. A local line from Redondo and San Pedro joins this line near Butte street. The principal Santa Fe freight yards lie along the west bank of the river between First and Sixth streets, but this carrier has a partially developed freight yard east of Los Angeles near Hobart station. Its coach yards lie between Seventh and Ninth streets, and its engine terminals just north of Butte street, along the west bank of the river.

The main line of the Los Angeles & Salt Lake, herein termed the Salt Lake, enters the city through Hobart from the southeast, and proceeds north up the east bank of the river from Alosta street to its station at First street. One local line continues on up the east bank of the river, passes under the North Broadway viaduct, and follows up the Arroyo Seco to Pasadena. A branch of this line crosses the Arroyo Seco and teminates at Glendale, a suburb about six miles north of Los Angeles station. Another local line from the south serves Long Beach and San Pedro and joins the main line between Hobart and the river. The present Salt Lake freight yards lie along the east bank of the river south of First street to Seventh street. Its coach yards are south of First street and its engine terminals just north of Fourth street. This carrier is constructing new shops, roundhouses, classification yards, and fuel facilities at Hobart Junction, about three miles southest of its present depot and about four miles from the Southern Pacific depot. The Salt Lake has a spur which leaves the main line between Hobart and the river and proceeds west across the river and along Butte street to a connection with the Southern Pacific line at Alameda street.

Appendix 2.

Outline of Various Station Plans Presented.

The Sachse Plan.—Under this plan the station would be of the stub-end type, and with its new plaza would occupy a site near the north end of Alameda street adjoining Main street on the west, Commercial street on the south, and San Pedro street extended on the east. The station building or head house would face south at the

north end of Los Angeles street, and the station tracks would extend north to a connection with the Redondo street wye. Southern Pacific trains from the north would enter the station over the present tracks past the River station freight yard, and those from the east by way of Alhambra avenue, as at present; Santa Fe and Salt Lake trains from Pasadena would be brought in over the Southern Pacific tracks past River station yard by means of connections near the North Broadway bridge. Salt Lake and Santa Fe trains entering the city from the south would proceed up the west bank of the river and reach the station over the tracks on Alhambra avenue.

As recommended to the Railroad Commission by its engineers, the larger plan made provision for the construction of a subway along Main street for the Pacific Electric from its station at Sixth street to the station at the Plaza and for some distance beyond to connect with present or prospective rapid transit lines to the east. The Pacific Electric is an extensive interurban system. It crosses many busy streets in Los Angeles at grade. The larger plan also contemplated the use of the River station freight yard for a union coach yard, and for the provision of necessary freight yards in lieu thereof north of the Arroyo Seco. Defendants severely criticised this feature. The same coach-yard arrangements as is contemplated under the Arcade plan would be practicable under either the Sachse station plan or the larger plan. To carry out the comprehensive project would require that some 65 acres of private property be condemned, and 19.5 acres of streets be closed. The improvements on this area are for the most part old, and many are poorly constructed, but some are substantial structures. The city charter,

unless amended, would not permit the construction of a subway along Main street. Due to the scope and completeness of the larger plan, the cost of carrying it out would be considerably greater than the cost of effectuating applicants' proposal. Because of its relation to the comprehensive plan, the cost of a union station under the Sachse plan would also doubtless exceed the minimum amount necessary to erect a union station in the Plaza area defined in the State Commission's order. Apparently for this reason and the possibility of confusion with the larger plan, complainants did not, upon the hearing of the consolidated cases or on brief, stress the comparative merits of the Sachse union station plan.

The Plaza Plan.—The site contemplated under the Plaza plan covers about 38 acres in the southerly portion of the area east of Alameda street, north of Aliso street, south of Macy street, and west of the river. The station would be of the stu-end type. The depot would front on Alameda street and would face the Plaza. Alameda street would be relocated a little to the west just in front of the station grounds and the Southern Pacific tracks thereon be permitted to remain. The station tracks would extend easterly to the river to a point near Commercial street. A double-track viaduct to carry Aliso street and the Southern Pacific-El Paso line over the river would be constructed somewhat south of Aliso street as at present. Vehicular traffic and the Pacific Electric would occupy the upper deck. Passenger trains coming down the river from the vicinity of the Arroyo Seco and those coming up the river from the vicinity of Butte street would follow the west bank to the station turnouts near Aliso street. Under this plan no provision is made for joint coach-yard

facilities. Presumably the carriers would follow the same arrangement as with respect to the Arcade plan.

The station building would be 400 feet long, 120 feet wide, and 60 feet high, with the upper floor substantially on a level with the Plaza, and reached by a bridge over Alameda street. The lower floor would be level with Alameda street and accessible for taxicabs and autos. A concourse 400 feet long, 50 feet wide, and 20 feet high would be reached from both floor levels by means of ramps. It would be 4.5 feet below the level of the upper floor and 8 or 13 feet above the Alameda street level, depending upon whether impaired or full clearance were allowed under the bridge across Alameda street. The station tracks at the concourse would be elevated 8 feet above Alameda street, and would be on a level with the concourse in the case of impaired clearance, or 5 feet below it in the case of full clearance. The bridge across Alameda street would be supported by steel columns dividing the street into three parts. The middle portion, 30 feet wide from center to center of columns, would provide for the double-track line of the Southern Pacific. The side portions would be 33 feet from center of columns to property line and would each give room for a 22-foot roadway and sidewalk.

The station yard would have 15 tracks ranging in length from 1000 to 1300 feet, and would readily admit of expansion. There would be a double-track approach over the Aliso street bridge and also from the north and south on the west bank of the river. The throat of the yard would have 5 tracks. At present it is practically a level grade from the river bank to Alameda street, but the 8-foot fill at the station and the depression of the river-bank tracks

in connection with the proposed river viaduct program would result in a grade of approximately 0.5 per cent on the station tracks and compensated grades of 1.24 per cent on the tracks to the Aliso street bridge, and 0.94 and 1.3 per cent, respectively, on the north-and-south wye tracks connecting the throat of the yard with the tracks on the west bank of the river. If the plan for depressing the river-bank tracks were modified by making the elevation at the Aliso street bridge about the same as at the throat of the station yard, the compensated grades on the north leg of the wye and the tracks to the bridge would approximate 0.5 per cent and on the south leg of the wye 1.13 per cent. This would increase the grade on the river-bank tracks between the south leg of the wye and First street from 0.485 to 0.665 per cent. The curvature on the north leg of the wye is 13°, and on the south leg 12° 30'. An interlocking plant would be located adjacent to the Aliso street bridge near the west-bank tracks.

Under this plan only industrial switching service would remain on Alameda street. The balance of the Southern Pacific freight traffic would be diverted to the river banks. Abandonment of small portions of Lyon and Vignes streets near the throat of the station yard would be necessary. Complainant has indicated its willingness to abandon such streets as may be necessary for the construction of any union station in the Plaza area.

The Arcade Plan Proposed by Applicants.—The Arcade station site and depot building have been described in the report. Under applicants' plan all eight of the present station tracks save one would be stubbed at Fourth street, the northern end of the yard, and four additional station tracks added. The tracks would range in capacity from

10 to 20 cars and would have an average capacity of 16 cars. The remaining track across Fourth street would furnish access to the railway-mail post office, the express yard, a plant of the Los Angeles Ice and Cold Storage Company, and would connect with the Alameda street tracks at Third street. As at present, access to trains would be by means of a subway under the station tracks, with ramps to the umbrella sheds and station building. From the south end of such sheds the station tracks would be gathered into the two-track throat near Sixth street. A spur from the east side of the yard would connect the throat with the Alameda street tracks. In order to secure a separation of grades, the station yard would be graded up on a 1 per cent grade from the present umbrella sheds toward the viaduct at the south end of the yard, and Sixth street and Alameda street would both be depressed five feet.

From the south end of the station yard the viaduct would extend across Sixth street on a 10° curve and turning eastward would cross Alameda street a short distance south of its intersection with Sixth street. From thence it would continue east, south of and parallel to Sixth street, to the west bank of the river. The grade on the curved viaduct mentioned would be a compensated grade of 1 per cent. The viaducts would be ballasted deck structures on concrete pillars or columns, with 20-foot spans between streets and clear spans over principal street crossings. From the west bank of the river curved bridges would extend to the Salt Lake right of way across the river, one to the north and one to the south. From the north end of the northerly curved bridge the track would descend to grade. Connections would be provided

with the Southern Pacific-El Paso line at Alhambra avenue and with its main line from the north on the east bank of the river north of the Arroyo Seco. The Salt Lake line to Pasadena and Glendale would have access to the station in similar manner. The southerly curved bridge would continue south along the east bank as an elevated structure, pass over Seventh street and reach grade near Ninth street. Connection with Alameda street and the Southern Pacific line from the south would be by means of the Butte street bridge reached by a curved track on the east bank. Salt Lake trains from the east and south would reach the station over the southerly curved bridge also. Under this plan only night switching of freight for industries would remain on Alameda street. The track along Alameda street would be cut near Sixth street and freight from the River station yard for industries on Alameda street south of Sixth street would move east on Alhambra avenue to the east bank of the river and thence to Alameda street by way of the Butte street bridge. The Southern Pacific intends, if the applications are granted, to relocate its coach yards adjacent to its shop grounds on the east bank of the river south of Alhambra avenue. The Salt Lake will have it coach yards at Hobart.

ORDER

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington D. C., on the 6th day of July, A. D. 1925.

Finance Docket No. 3569.

In the matter of the application of the Southern Pacific Company, Southern Pacific Railroad Company, and the Los Angeles & Salt Lake Railroad Company for a certificate of public convenience and necessity.

Investigation of the matters and things involved in the above-entitled proceeding having been had, and the said Commission having, on the date hereof, made and filed a report containing its finding of fact and conclusion thereon, which said report is hereby referred to and made a part hereof:

It is ordered, That the application herein be, and it is hereby, denied.

By the Commission.

[SEAL] GEORGE B. MCGINTY,
Secretary.

SECOND LOS ANGELES UNION STATION DECISION OF SUPREME COURT OF THE UNITED STATES.

INTERSTATE COMMERCE COMMISSION,
Petitioner,

vs.

UNITED STATES OF AMERICA, at the Relation of City of Los Angeles (a municipal corporation),
Respondent.

(280 U. S. 52.)

Decided November 25, 1929.

On Writ of Certiorari to the Court of Appeals of the District of Columbia, to review a judgment reversing a judgment of the Supreme Court of the District of Columbia dismissing a petition for a writ of mandamus to compel the Interstate Commerce Commission to consider whether it should make an order directing certain railroad companies to build and use a union passenger station. Reversed.

See same case below,—App. D. C.—34 F. (2d) 228.

The facts are stated in the opinion.

Mr. Chief Justice TAFT delivered the opinion of the Court.

By petition filed July 12, 1928, respondent sought from the Supreme Court of the District of Columbia a writ of mandamus compelling petitioner, the Interstate Commerce Commission, to consider the evidence introduced in the proceeding before it known as *Los Angeles Passenger Terminal Cases*, 100 I. C. C. 421; 142 I. C. C. 489, for the

purpose of determining whether the Commission shall order the Atchison, Topeka & Santa Fe Railway Company, the Southern Pacific Company, and the Los Angeles & Salt Lake Railroad Company to build and use an interstate union passenger station in the City of Los Angeles, California; and after consideration of the evidence, to make such order therein as the facts may require. The Supreme Court of the District dismissed the petition. The Court of Appeals reversed its judgment and remanded the cause for further proceedings. 34 F. (2d) 228. This Court granted a writ of certiorari.

The Railroad Commission of that state had in 1921 (19 Opinion of the R. R. Com. of Cal., pp. 740, 937) ordered the carriers to file plans, etc., and to acquire sufficient land within what is known as the Plaza area in that city for a union passenger station and terminal, to submit plans therefor, and, upon their approval by that Commission, to proceed with the construction of the station. The carriers carried these orders by writs of certiorari to the Supreme Court of the state, and that Court, in *Atchison, Topeka & Santa Fe Railway Co. v. Railroad Commission*, 190 Cal. 214, held that by the Transportation Act of 1920 Congress had taken exclusive authority over the matter of a union interstate terminal depot, and the Court therefore denied the State Railroad Commission the jurisdiction which it had sought to exercise. The State Railroad Commission petitioned this Court for writs of certiorari and at the same time instituted proceedings before the Interstate Commerce Commission which resulted in the orders above referred to.

This Court granted a writ of certiorari and on April 7, 1924, rendered its decision in *Railroad Commission v.*

Southern Pacific Co., 264 U. S. 331, wherein, in affirming the judgment of the state Court, we held that the relocation of tracks, which was incidental to the proposed union passenger station, required a certificate of approval by the Interstate Commerce Commission under paragraphs 18 to 21 of Section 1, Interstate Commerce Act as amended by Section 402, Transportation Act of 1920 (41 Stat. 476, 478), as a condition precedent to the validity of any action by the carriers or of any order by the State Railroad Commission, and that until the Interstate Commerce Commission had acted under those paragraphs, the carriers could not be required to provide a new union station or to extend their main tracks thereto as ordered by the State Railroad Commission.

Pending the hearing of the causes in 264 U. S. 331, the direct proceeding, referred to above, was instituted before the Interstate Commerce Commission by the City of Los Angeles, asking for an order by the Commission requiring the three railroads to build a new union station at the Plaza site. With it were consolidated an application by the Southern Pacific Company for authority to abandon certain main line tracks and the operation of passenger and freight train service on Alameda Street, and an application by the Southern Pacific and the Salt Lake for authority to construct new, and to extend existing, lines.

The Commission held, 100 I. C. C. 421, that it was without authority to require the construction of the new union station. It said in the report, at page 430:

"We conclude that we are not empowered to require the construction of a union passenger station as sought in No. 14778. To make the record clear, we repeat that no question of discrimination or preference is presented

here and that under the issues framed in the complaint in No. 14778 we will give no consideration to matters shown of record for the purpose of determining whether we should issue an order *requiring* the construction and use of a union station by any of the defendants."

The Commission, in order to facilitate dispatch in the disposition of the case, although it held that it had no power to require the building of an interstate commerce passenger station, made hypothetical certificates, which could be summarized as follows:

(1) That the public convenience and necessity require the extensions of lines that may be necessary to reach and serve any union passenger station within the plaza which may be constructed in accordance with a lawful order of the State Commission and that may be necessary to provide for the incidental rearrangement of passenger and freight routes, and that the expense involved will not impair the carriers' ability to perform their duties to the public. (2) That public convenience and necessity permit the abandonment of train service on Alameda Street and such other abandonments of lines as would be necessary in connection with the establishment of any such station, so lawfully ordered by the State Commission. The report further found that such joint use of track or other terminal facilities as may be incidental and necessary to the proper operation of any such union station is in the public interest and is practicable, without substantially impairing the owning carriers' ability to handle their own business. As to the application by the Southern Pacific and Salt Lake to extend their lines to permit the joint use of the Southern Pacific's existing station, the Commission's findings were unfavorable and its order de-

nied the application. The Commission's then report was not accompanied by certificates carrying out its findings, and it reserved jurisdiction to alter its findings in the event that the plan of the State Commission, as finally evolved, should be materially different from that "as here considered to be in the public interest."

After a further hearing in the direct proceeding instituted by Los Angeles for an order directing the erection of a union station the prayer of Los Angeles was denied. (142 I. C. C. 489.) Thereafter the City filed the petition above referred to in the Supreme Court of the District of Columbia for a writ of mandamus. This was in the present proceeding.

Attached to the petition as exhibits were the pertinent parts of the record in the previous cases. There were filed an answer of the Commission, and a demurrer to the answer. The Commission still adhered to its original report. The Supreme Court of the District entered a judgment overruling the demurrer and, the City electing to stand upon the petition, dismissed the petition. On an appeal, the judgment was reversed by the Court of Appeals of the District, which held, in substance, that the Commission was vested with supervisory control over the three carriers and that they were subject to an order requiring the construction of the union station and the necessary connecting tracks prayed for.

The sole question for decision is whether the Interstate Commerce Commission has jurisdiction to order the construction of the union station. This issue arises on provisions of the Interstate Commerce Act, 24 Stat. 379, as amended by the Transportation Act of 1920, 41 Stat. 456,

476-479. These are paragraphs 18 to 22 added to Section 1 of the Original Act, and paragraphs 3 and 4 of Section 3.

These paragraphs and sections of the Transportation Act of 1920 may be shortly stated as follows:

Paragraph 18 forbids the construction of a new line of railroad, or the acquisition or operation of any line of railroad or extension thereof in interstate commerce, unless there shall have been obtained from the Commission a certificate that the present and future convenience and necessity require or will require the construction or operation of such additional or extended line of railroad, and forbids any interstate carrier to abandon all or any portion of its line, unless there shall have been obtained from the Interstate Commerce Commission a certificate of public convenience and necessity.

Paragraph 19 requires notice and hearings in any proceeding to secure such certificate.

Section 20 gives the Commission discretionary power to issue such certificates and provides for an injunction at the suit of the United States for any construction, operation or abandonment of such line of railroad or extension thereof without a certificate, and punishes a violation.

Section 21 provides that after a hearing in such proceeding upon complaint, or upon its own initiative without complaint, the Commission may authorize or require by order any carrier by railroad subject to the act to provide itself with safe and adequate facilities for performing as a common carrier its car service, as that term is used in the Act, and to extend its line or lines, if the Commission finds that it is reasonably required in the interest of public convenience and necessity, and will not

impair the ability of the carrier to perform its duty to the public.

Section 3, embracing paragraphs 3 and 4, provides, in paragraph 3, that carriers shall afford all reasonable, proper and equal facilities for the interchange of traffic between their respective lines and for the receiving, forwarding and delivering of passengers or property to and and from their several lines and those connecting therewith and forbids discrimination.

Paragraph 4 provides that if the Commission finds that to do so will not substantially impair the ability of a carrier owning and entitled to the enjoyment of terminal facilities to handle its own business, it may require the use of any such terminal facilities of any carrier, including main-line track or tracks for a reasonable distance outside of such terminal, by another carrier or other carriers, on such terms and for such compensation as the carriers affected may agree upon, or, in the event of a failure to agree, as the Commission may deem just and reasonable for the use so required, as if in condemnation proceedings.

In its final report the Interstate Commerce Commission held that it had no power to require the construction and operation of a union station upon the site specified. The Commission's report was in part as follows:

"Complainants have again raised the question whether we have power to require the defendants to construct and operate a union passenger station upon the site heretofore specified in our findings. Their contention that we have such power was pressed with vigor upon the original submission before us. The complainants point to section 3,

paragraphs 3 and 4 of the interstate commerce act as furnishing the necessary statutory authority. As stated in the original report, at page 430, we concluded that we are not empowered to require the construction of a union passenger station as sought in No. 14778, under the issues framed in the complaint therein. * * * In Alabama & Vicksburg Ry. Co. v. Jackson & Eastern Ry. Co., 271 U. S. 244, 250, the Supreme Court said:

"'In matters relating to the construction, equipment, adaptation and use of interstate railroad lines, with the exceptions specifically set forth in paragraph 22, Congress has vested in the Commission the authority to find the facts and thereon to exercise the necessary judgment. The Commission's power under paragraph 3 of Sec. 3 to require the establishment of connections between the main lines of carriers was asserted by it in Pittsburgh & W. V. R. R. Co. v. Lake Erie, A. & W. R. Co., 81 I. C. C. 333, a case decided after the withdrawal by the Jackson & Eastern of its application to the Commission for leave to make the junction at Curran's Crossing, and in Chamber of Commerce v. Wichita Falls, R. & Ft. W. R. Co., 109 I. C. C. 81. That its jurisdiction is exclusive was held in People ex rel. New York C. R. Co. v. Public Service Commission, 233 N. Y. 113, 119-121. Compare Lake Erie, A. & W. R. Co. v. Public Utilities Commission, 109 Ohio St. 103.'"

The Commission proceeded:

"The distinction between a simple switch connection such as was contemplated by the cases previously referred to, and the elaborate facilities sought to be required by us in the present case, is obvious. Re-examination of the whole subject again leads us to the conclusion

that under existing law we are not empowered to require the construction of a union passenger station of the character sought by the complaint. * * *

"All issues of fact having been considered and concluded by our original report and this report on further hearing, nothing remains for us but to deny the application of the City of Los Angeles and the intervener, the Railroad Commission of the State of California, for a final order herein requiring the construction of a station as found in the public interest. * * *."

In weighing the effect of the Transportation Act, it should be noted that in this important measure affecting associations between interstate carriers of a compulsory character, there is nowhere express authority for the establishment of union passenger stations compulsory or otherwise. Emphasis is put on physical connection between the tracks of one carrier and others if permitted by the Interstate Commerce Commission and if properly paid for, either by agreement or condemnation, by the carrier enjoying the use of the track of the other companies. But it is limited in extent to connections with the terminals of other companies within a reasonable length. This Court said that the possible peril to interstate commerce in a physical connection between two main tracks "shows that the jurisdiction of the Commission over such connections must be exclusive if the duty imposed upon it to develop and control an adequate system of interstate rail transportation is to be effectively performed. Moreover, the establishment of junctions between the main lines of independent carriers is commonly connected with the establishment of through routes and the interchange of car services and is often but a step toward

the joint use of tracks." *Alabama & V. R. Co. v. Jackson & E. R. Co.*, 271 U. S. 244, 250.

The description in the *Alabama Railway* case, 271 U. S. 244, is that of a physical connection between railroads engaged in interstate commerce, but it contains no suggestion that the junction is to include union passenger stations.

There are cases in the state Courts in which by virtue of statutory provision railroads are required expressly to unite in a passenger station, if determined by Commissioners appointed by the Court or by a Railroad Commission. *Mayor and Aldermen of Worcester v. Norwich and Worcester Ry. Co.*, 109 Mass. 103, 113; *Railroad Commission of Alabama v. Northern Alabama Ry. Co.*, 182 Ala. 357; *Railroad Commission of Alabama v. Alabama Great Southern Ry. Co.*, 185 Ala. 354, 362; *Missouri, O. & G. Ry. Co. v. State*, 29 Okla. 740; *Chicago, R. I. & P. Ry. Co. v. State*, 90 Okla. 173; *State v. St. Louis Southwestern Ry. Co.* (Tex. Civ. App.), 165 S. W. 491, 199 S. W. 829, 930; but there is no Federal case in which is built up out of such words as those which we find in the Transportation Act of 1920 authority for requiring such a station.

Without more specific and express legislative direction than is found in the Act, we can not reasonably ascribe to Congress a purpose to compel the interstate carriers here to build a union passenger station in a city of the size and extent and the great business requirements of Los Angeles. The Commission was created by Congress. If it was to be clothed with the power to require railroads to abandon their existing stations and terminal tracks in a city and to combine for the purpose of establishing in

lieu thereof a new union station, at a new site, that power we should expect to find in congressional legislation. Such authority, if conferred in Los Angeles, would have application to all interstate railroad junctions, including the numerous large cities of the country, with their residential, commercial, shopping, and municipal centers now fixed and established with relation to existing terminals. It would become a statute of the widest effect and would enter into the welfare of every part of the country. Various interests would be vitally affected by the substitution of a union station for the present terminals. A selection of its site from the standpoint of a city might greatly affect property values and likewise local transportation systems. The exercise of such power would compel the carriers to abandon existing terminals, to acquire new land and rights of way and enter upon new construction, to abandon large tracts and to sell territory of the same extent as no longer necessary for the use of the carriers.

There would have to be tribunals to apportion the expenditures and cost as between the carriers. A proper statute would seem to require detailed directions, and we should expect the intention to be manifested in plain terms and not to have been left to be implied from varied regulatory provisions of uncertain scope. It would be a monumental work and one requiring the most extensive exercise of expert engineering and railroad construction. It would make possible great changes of much importance in the plans of every city and in the rearrangement and mutations of railroad property and public and private business structures everywhere. We find no statutory preparation for the organization of such machinery.

We cannot agree with the Court of Appeals of the District in its disposition to view Section 3, paragraph 3, as

vesting the Interstate Commerce Commission "with almost unlimited power in the matter of establishing terminals and union stations for the proper interchange of traffic between the converging interstate railroad lines." The words "reasonable, proper and equal facilities" are of course comprehensive enough to include not only trackage but terminal facilities described as extending a reasonable distance outside of the terminal, but hardly to give the Commission "unlimited power" in the building of union stations.

To attribute to Congress an intention to authorize the compulsory establishment of union passenger stations the country over, without special mention of them as such, would be most extraordinary. The general ousting from their usual terminal facilities of the great interstate carriers would work a change of title and of ownership in property of a kind that would be most disturbing to the business interests of every state in the country.

To recognize what is here sought as within the power of the Commission to order to be done in each of all the great cities throughout the United States and to sustain it as legal, without provision for effective restraint by the carriers, or other interests, would expose the community to possible abuse, with nothing but self-imposed restraint on bureaucratic extravagance.

When the interest of a great city in its improvements is to be promoted entirely at the expense of railroads that enter it, Congress would be expected to hesitate before it would change discretionary leave for the erection of such stations into positive command. In such a case the expenditure of a large amount of capital will not bring with it corresponding increase in the railroad revenues. If

Congress had intended to give an executive tribunal unfettered capacity for requisitioning investment of capital of the carriers and the purchase of large quantities of land and material in an adverse proceeding, we may well be confident that Congress would have made its meaning far clearer and more direct than in the present meager provisions of the Transportation Act. The suggestion of complainants is that out of provisions for local union of main tracks and switching tracks we should use our imaginations and develop them into provisions for giant union passenger stations. It is true that the railway systems may be united through switches and connecting tracks in physical connection, but this has not been held to justify great monumental structures, extended in their complicated machinery and superficial extent and expense. There is a difference of real substance between such connecting tracks and switches and junctions and a metropolitan union passenger station. The latter calls into being a new entity naturally requiring new legislative authority. This Court, referring to a kindred matter, said of this case:

"But there is a great difference between such relocation of tracks or local union stations and what is proposed here. The differences are more than that of mere degree; they and their consequences are so marked as to constitute a change in kind." 264 U. S. 331, 346.

But it is said that we have already foreclosed the conclusion in this case by our opinion in 264 U. S. 331. The only issue there presented to this Court, was whether it was necessary to secure from the Interstate Commerce Commission its approval of the construction of a union station and the relocation of the connecting tracks proposed. The point in that case was the necessity for the

acquiescence by the Interstate Commerce Commission in respect to a union passenger station. We held such a certificate to be necessary before a union station or connecting lines of interstate carriers could be lawful. That is all we held.

It is quite true that we made references in the opinion to a case foreshadowed in the hypothetical certificates of the Commission in the building of a union station. Such references, had, however, not the slightest significance in respect to who could or should build the station, or whence its cost should be defrayed. It was as far as possible from the purpose of the Court in its opinion to indicate its views of the powers which the Commission could exercise adversely to the carriers in compulsory proceedings. They were not before the Court for adjudication.

In what situations, if any, action of the Interstate Commerce Commission may be controlled or corrected by mandamus need not now be considered, because it is apparent that there is here no meritorious basis for exerting such power, even if found to exist.

The judgment of the Court of Appeals of the District of Columbia is reversed.

FILE COPY

APR

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1930

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation,
Appellant,
vs.
RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, et al.,
Appellees.
No. 470

LOS ANGELES & SALT LAKE RAILROAD COMPANY, a corporation,
Appellant,
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RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, et al.,
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SOUTHERN PACIFIC COMPANY, a corporation, and SOUTHERN PACIFIC RAILROAD COMPANY, a corporation,
Appellants,
vs.
RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, et al.,
Appellees.
No. 472

BRIEF OF AMICI CURIAE IN BEHALF OF CITY OF LOS ANGELES

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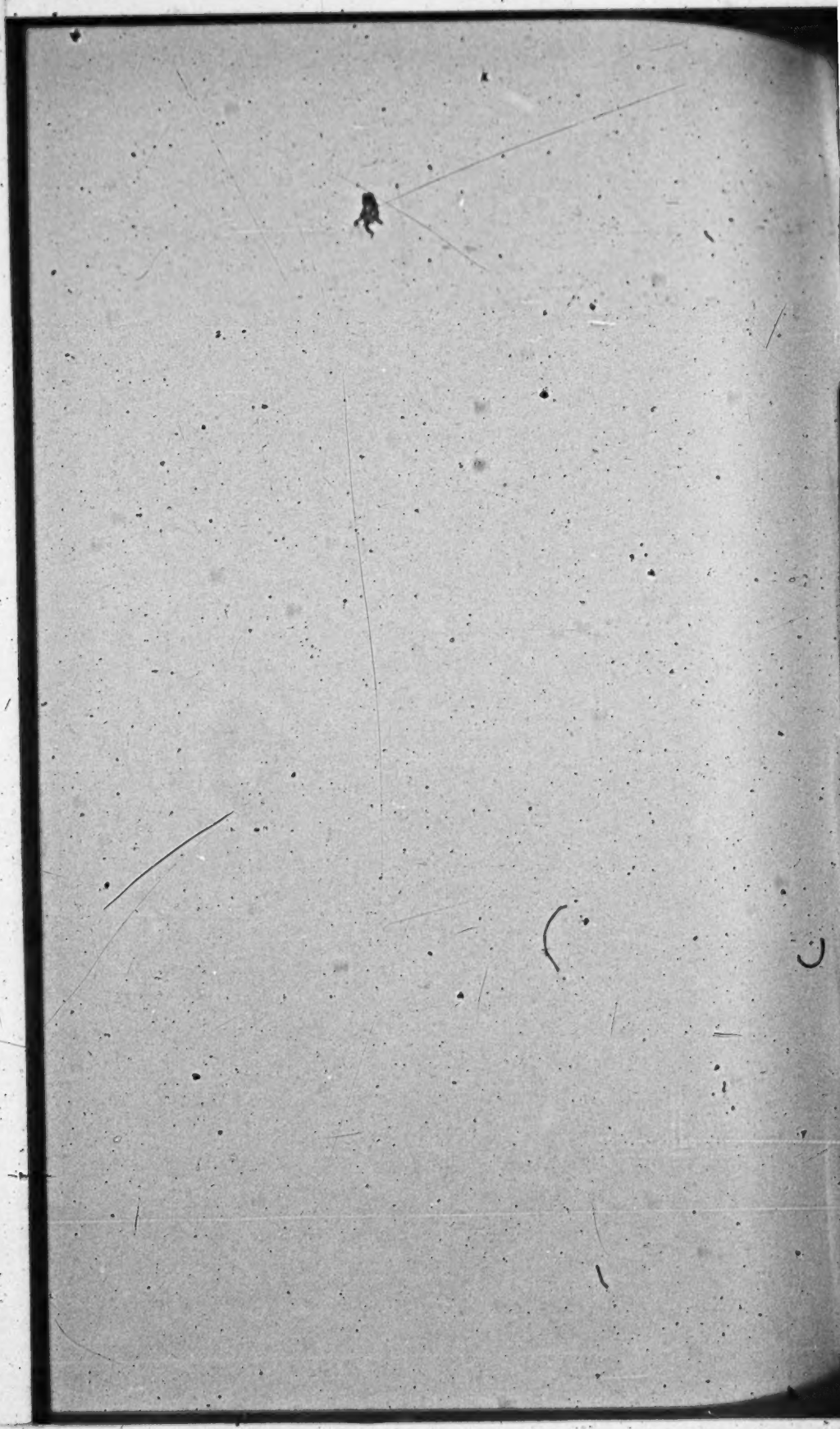

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221	1*	California Railroad Commission.	Railroad Commission Grade Crossing and Terminal Investigation—Los Angeles.
225	5*	City of Los Angeles.	Decision of Interstate Commerce Commission in Los Angeles Passenger Terminal Cases, 100 I. C. C. 421, decided June 6, 1925.
227	4	California Railroad Commission.	Plan for Union Passenger Terminal at Plaza, June, 1924.
227	5	California Railroad Commission.	Map—Railroad and Industrial District, Los Angeles.
227	6	California Railroad Commission..	Key Map of the Commission's Plaza Plan.
228-30	3	Atchison, Topeka and Santa Fe Railway Company.	Estimated cost of Proposed Depot, etc., for Exclusive Use of Santa Fe, Los Angeles.
230-1	13	California Railroad Commission.	New Money Required for Plaza Plan.
231-2	14	California Railroad Commission.	Estimated Cost, Passenger Facilities, Plaza Plan.
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238-9	22	California Railroad Commission.	Automobile Registration Statistics—Growth in Automobile Registration.
240	23	California Railroad Commission.	Delays to Traffic at Alameda Street Crossings, 1918 and 1923.
242-4	24	California Railroad Commission.	Comparison of Scheduled and Actual Through Passenger Train Movements in and out of Los Angeles.

NOTE—*Indicates an exhibit certified separately and transmitted as an original exhibit.

Page of Transcript of Record	Number of Exhibit	Party Offering Exhibit	Subject Matter of Exhibit
245	25	California Railroad Commission.	Passengers Handled by Steam Railroads in and out of Los Angeles for Typical Week, 1926.
246	26	California Railroad Commission.	Comparison of Passengers Handled by Steam Railroads in and out of Los Angeles for Typical Week in Years 1918, 1923 and 1926.
247	27	California Railroad Commission.	Comparison of Annual Ticket Sales in Los Angeles.
248-9	28	California Railroad Commission.	Statement Showing Normal and Maximum Number of Passengers Handled in and out of Los Angeles for a Period of Sixty Minutes, January, 1926.
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253-4	32	California Railroad Commission.	Proportions of Use of Various Methods of Transportation to and from Steam Railroad Stations.
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267	4B	California Railroad Commission.	Plan for a Union Passenger Terminal at the Plaza.
267-9	52	California Railroad Commission.	Estimated Areas of Union Passenger Station Facilities, Plaza Plan of March, 1926.
270	13*	City of Los Angeles.	Map—Major Traffic Street Plan, Los Angeles.

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270	14*	City of Los Angeles.	Map—Existing Major Thoroughfares Serving Administrative Center Site.
270	15*	City of Los Angeles.	Map—Administrative Center District and Adjoining Areas Showing Certain Land Ownerships.
271	16*	City of Los Angeles.	Map—Metropolitan Mosaic, Greater Los Angeles.
274	36*	Carriers	Proposed Train Movements in and out of Station, Joint Terminal Los Angeles & Salt Lake Railroad and Southern Pacific.
280-5	87	Carriers	Deed—Wolfskill to Southern Pacific Railroad Company.
286	80*	Carriers	Los Angeles Union Passenger Terminal Proposed by California Railroad Commission in Los Angeles.
287	88*	Carriers	Estimate Los Angeles and Salt Lake Railway Company and Southern Pacific Company Joint Passenger Terminal Facilities.
287-91	90	Carriers	Comparison of Estimates of Commission's Plaza Plan as made by Commission's Engineers and by Carriers' Engineers.
293-4	101	Carriers	Statement showing Normal and Maximum Number of Passengers handled in and out of Los Angeles for a Period of Sixty Minutes, January, 1926.
295-6	106	Carriers	Comparative Financial Statement—Carriers' Plan, Plaza Plan.
301-2	56	California Railroad Commission.	Chart—Showing Increase of Population and Trend of Passenger Traffic on all Steam Lines in Los Angeles.

In the Supreme Court
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OCTOBER TERM, 1930

THE ATCHISON, TOPEKA AND SANTA FE RAILWAY COMPANY, a corporation, *Appellant*, vs. RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, et al., *Appellees.*	No. 470
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SOUTHERN PACIFIC COMPANY, a corporation, and SOUTHERN PACIFIC RAILROAD COMPANY, a corporation, *Appellants*, vs. RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, et al., *Appellees.*	No. 472

MOTION FOR LEAVE TO FILE BRIEF AS AMICI CURIAE

May It Please the Court:

The undersigned, as counsel for the City of Los Angeles, State of California, respectfully move this

Honorable Court for leave to file the accompanying brief in this case as *amici curiae*.

ERWIN P. WERNER,
MILTON BRYAN,
MAX THELEN,
JESS E. STEPHENS,
EDWIN C. BLANCHARD,
Counsel for City of Los Angeles, as Amici Curiae.

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BRIEF OF AMICI CURIAE IN BEHALF OF CITY OF LOS ANGELES

I. Introduction.

This brief is filed by permission of this Court by amici curiae who are counsel for the City of Los

Angeles, which city is vitally interested in the outcome of this proceeding.

This is an appeal by railway companies from the decision of the Supreme Court of California filed on May 27, 1930, in *The Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of the State of California* and two similar cases consolidated therewith in which Los Angeles & Salt Lake Railroad Company, and Southern Pacific Company and Southern Pacific Railroad Company, respectively, were the petitioners (209 Cal. 460, 79 Cal. Dec. 457, R. 184-198).

In said decision, the Supreme Court of California affirmed an order of the Railroad Commission of California, filed on July 8, 1927, in *Municipal League v. Southern Pacific Company, Atchison, Topeka & Santa Fe Railway Company* and *San Pedro, Los Angeles & Salt Lake Railroad Company,* and seven other proceedings consolidated therewith. Volume 30, Opinions and Orders of the Railroad Commission of California, p. 151 (R. 119-134).

A.

ORDER OF CALIFORNIA RAILROAD COMMISSION.

The order of the Railroad Commission directed the Southern Pacific Company (hereinafter at times referred to as the Southern Pacific), The Atchison, Topeka & Santa Fe Railway Company (hereinafter at times referred to as the Santa Fe) and the Los Angeles and Salt Lake Railroad Company (hereinafter

at times referred to as the Salt Lake or the Union Pacific) to construct and thereafter operate a union passenger station within a specified area within the City of Los Angeles in the vicinity of the Plaza, together with such tracks and other physical structures as may be reasonably necessary and incidental to the use of said union passenger station, at a cost of approximately ten million ($10,000,000.00) dollars, in substantial compliance with the "Plan for a Union Passenger Terminal at the Plaza" which is marked as Railroad Commission's Exhibit 4B (R. 133). Exhibit 4B is inserted opposite page 266 of the Record herein.

The carriers were directed to start work upon the construction of the union passenger station within ninety (90) days and to complete the same within three (3) years (R. 133).

Upon and after the construction of the union passenger station, the Southern Pacific was directed to discontinue the operation of freight and passenger train service, excepting only industrial freight switching service during hours to be thereafter specified, over that portion of its railroad which lies on and along Alameda Street between College Street and East Fifteenth Street, inclusive, in the City of Los Angeles (R. 133-4).

The order then continued as follows (R. 134):

> "This above order shall be and become effective from and after the promulgation by the Interstate Commerce Commission of an order issuing

and granting proper and sufficient certificates or other appropriate order or orders covering and authorizing the construction, extensions and abandonments herein authorized or directed, it being the intent of this Commission that the issuance of such certificates or other order or orders on the part of the Interstate Commerce Commission shall be and constitute a condition precedent to the effectiveness of the said order of this Commission."

The Railroad Commission's attorney was directed to file with the Interstate Commerce Commission a copy of said order, with a petition that the latter Commission issue such certificates or other appropriate order or orders as might be requisite or proper in order to render said order effective (R. 134).

The Railroad Commission reserved "the right to make such further order or orders in these proceedings relating to the construction, operation, modification and abandonment of facilities, to costs and division of costs, and to all other matters relating thereto, as may be determined by the Commission to be just and reasonable and as public safety, convenience and necessity may require" (R. 134).

Finally, the Railroad Commission dismissed Application No. 3346, which was an application by the Southern Pacific and the Salt Lake for approval of an agreement under which these carriers would have made effective their plan for handling the terminal situation in Los Angeles. This plan was disapproved by the Railroad Commission (R. 134), following its

prior disapproval by the Interstate Commerce Commission in Finance Docket No. 3569 (*Los Angeles Passenger Terminal Cases,* 100 I. C. C. 421, 459, 460, Exh. 5 of City of Los Angeles, separately certified and forwarded, R. 7).

Upon petitions separately filed by the Railroad Commission and by the City of Los Angeles, the Interstate Commerce Commission thereupon reaffirmed the findings and issued the certificates specified by this Court in the *First Los Angeles Union Station Case, Railroad Commission of California v. Southern Pacific Company,* 264 U. S. 331 (*Los Angeles Passenger Terminal Cases,* 142 I. C. C. 489; R. 135, 138-40, 145, 153-4, 154-6).

Certified copy of said decision of the Interstate Commerce Commission was thereupon formally filed by the Railroad Commission in the proceedings then pending before it, the petitions of the carriers for rehearing were denied and the carriers filed with the Supreme Court of California petitions for the issuance of writs of review, which writs were issued.

B.

DECISION OF SUPREME COURT OF CALIFORNIA.

Thereafter, following the decision of this Court in the *Second Los Angeles Union Station Case, Interstate Commerce Commission v. United States ex rel. City of Los Angeles,* 280 U. S. 52, the Supreme Court

of California filed the decision which is the subject of the present appeal (R. 184-198).

The Supreme Court of California held:

1. That, in the light of this Court's decisions in the *First* and the *Second Los Angeles Union Station Cases,* it is clear that the Transportation Act, 1920, did not transfer to the Interstate Commerce Commission the power to make the order here involved (R. 185-192);

2. That the argument of the carriers that Congress had at least "entered the field" to an extent sufficient to terminate the state's authority to deal with the subject is shown to be without merit by this Court's decision in the *First Los Angeles Union Station Case* "to the effect that an order is to be made by the state commission, conditioned only upon the proper findings and certificates of the Interstate Commerce Commission" (R. 192);

3. That under the Constitution and the Public Utilities Act of California there can be no question that the Railroad Commission possesses powers sufficiently broad to include the ones sought to be exercised by the Commission (R. 192-3);

4. That there is no merit in the contention of the carriers that the Railroad Commission's order violates "the law of the case" (R. 193-4);

5. That the Railroad Commission's order does not violate any rights of the carriers under the

Fourteenth Amendment to the Federal Constitution, as appears from an analysis of the facts of the present case and the principles uniformly established in many union passenger station cases (R. 195);

6. That the argument of the Southern Pacific based on the necessity, under the order, of abandoning the present Arcade Depot is without merit, that the record shows the operation of the Southern Pacific's passenger trains along Alameda Street to and from the Arcade Depot to be "so unsafe, impracticable and unreasonable * * * as to require elimination," that this conclusion has been conceded by the Southern Pacific, which submitted a plan of its own, and that the findings of the Railroad Commission upon the subject were made "after full consideration and upon ample evidence" (R. 196);

7. That the contention of the Santa Fe and the Salt Lake that they were being required to join in the construction of a union passenger station by reason of the Southern Pacific's necessity for a change, is unsound for the reason that "each company is ordered to join in the erection of the union station because of its own inadequacies in terminal passenger facilities" and that "each carrier will be required to pay because of and in an amount proportionate to the evils in its system sought to be remedied by the new plan" (R. 196-7);

8. That an examination of the record shows that "there is nothing unreasonable or arbitrary in the findings and order made" (R. 197);

9. That the order is not void for uncertainty (R. 197-8);

10. That the contention of the carriers that the certificates issued by the Interstate Commerce Commission are not proper and sufficient certificates "is not properly raised here," that "the certificates on their face are proper and sufficient and comply with the decision of the Supreme Court of the United States" and that both the Interstate Commerce Commission and the Railroad Commission so considered them (R. 198); and

11. That the details of construction of the union passenger station are sufficiently specified (R. 198).

II. Statement of the Case.

A.

PHYSICAL FACTS.

The physical facts with reference to the location of the existing lines of railroad of the Southern Pacific, the Santa Fe and the Salt Lake in the City of Los Angeles, the existing passenger depot facilities, and the area in the Plaza district in the City of Los Angeles specified in the Railroad Commission's order as the location for the proposed union passenger station

and the other physical facts bearing on the present issue are set forth in the following decisions of the Interstate Commerce Commission and of the Railroad Commission:

1. *Los Angeles Passenger Terminal Cases* (First Decision), 100 I. C. C. 421; Exh. 5 of City of Los Angeles, separately certified and forwarded (R. 7);
2. *Los Angeles Passenger Terminal Cases* (Second Decision), 142 I. C. C. 489 (R. 135-156);
3. *Municipal League v. Southern Pacific Company, et al.,* and consolidated cases (First Case), Volume 20, Opinions and Orders of Railroad Commission of California, p. 937 (R. 84-96); and
4. *Municipal League v. Southern Pacific Company, et al.,* and consolidated cases (Second Case), Volume 30, Opinions and Orders of Railroad Commission of California, p. 151 (R. 119-134).

The tracks, existing passenger station facilities and area for the proposed union passenger station are shown on the map which is Railroad Commission's Exh. 5, entitled "Railroad and Industrial District—Los Angeles," which appears opposite page 226 of the Record herein.

The plan for the proposed union passenger terminal at the Plaza in Los Angeles is shown on the "Plan for a Union Passenger Terminal at the Plaza" which

is marked C. R. C. Exhibit 4B and appears opposite page 266 of the Record herein.

Under the head of "Physical Facts," we shall refer herein, very briefly, only to "Existing Passenger Depots" and to "Alameda Street Situation."

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1. EXISTING PASSENGER DEPOTS.

a. Salt Lake Passenger Depot.

The Salt Lake (part of the Union Pacific system) does not now own any passenger depot in the City of Los Angeles.

This carrier formerly owned and operated a passenger station on the east bank of the Los Angeles River, north of First Street. The passenger station building at said location was a two-story frame building which was erected in 1891 at a cost of approximately $10,000.00. This structure was inadequate to serve the needs of the traveling public and its location was inconvenient and its access dangerous to the public (*Los Angeles Passenger Terminal Cases* (First Decision) 100 I. C. C. 421, 432, 454; *Municipal League v. Southern Pacific et al.* (First Case), Volume 20, Opinions and Orders of Railroad Commission of California, pp. 937, 942, R. 84, 88; Exh. 1 of California Railroad Commission (Sachse Report), pp. 244-5, separately certified and forwarded, R. 7).

In 1924, a fire did some damage to the second story of the building, whereupon the Salt Lake was author-

ized by the Railroad Commission to run its passenger trains into the Arcade depot of the Southern Pacific as a temporary matter. In its order, the Railroad Commission expressly provided that the Salt Lake and the Southern Pacific should not use the granting of the application either by way of defense or argument on the ground of capital expenditures or on any other ground against any order, or in any proceeding then or thereafter pending before said Commission or any other Commission, court or public tribunal providing for or looking toward railroad or terminal unification in the City of Los Angeles (*Application of Southern Pacific Company and Los Angeles and Salt Lake Railroad Company,* Volume 25, Opinions and Orders of Railroad Commission of California, pp. 281, 285).

The Salt Lake thereupon accepted said order of the Railroad Commission, began its operations into the Arcade Depot on or about November 1, 1924, and has continuously subsequent thereto operated its passenger trains into and out of the Arcade Depot. In order to reach the Arcade Depot, the Salt Lake operates all its passenger trains at grade on and along Alameda Street from Butte Street on the south to the Arcade Depot on the north, across many important public streets. Thereby the inconvenience and danger to traffic, both vehicular and pedestrian, across this portion of Alameda Street has been greatly accentuated (Mott, R. 242; *Municipal League v. Southern Pacific Company et al.* (Second Case), Volume 30, Opinions and

Orders of Railroad Commission of California, pp. 151, 157-8; R. 119, 128).

b. Santa Fe Depot.

The Santa Fe's passenger station in the City of Los Angeles is located along the west bank of the Los Angeles River, south of First Street, in a small brick building which was erected in 1893. The structure is inadequate and does not meet the reasonable requirements of the traveling public (*Los Angeles Passenger Terminal Cases,* (First Decision), 100 I. C. C. 421, 432, 454; *Municipal League v. Southern Pacific Company, et al.* (First Case), Volume 20, Opinions and Orders of Railroad Commission of California, pp. 937, 944, R. 84, 88; Exh. 1 of California Railroad Commission (Sachse Report), pp. 90, 242-3, separately certified and forwarded, R. 7; Sachse, R. 260).

Substantially all members of the public who have occasion to use the Santa Fe's passenger depot can do so only by crossing Alameda Street and the main tracks of the Southern Pacific located thereon. The Santa Fe's present passenger depot is located on a site which is inconvenient and difficult of access and dangerous to the public desiring to use the passenger depot (Exh. 5 of California Railroad Commission, opposite p. 226 of Record).

The Santa Fe concedes the inadequacy of the present structure and has plans for rebuilding the same at a cost of $1,182,317.00 (Ball, R. 228; Exh. 3 of Santa Fe, R. 229-30).

c. Southern Pacific Depot.

The Southern Pacific's Arcade passenger depot in the City of Los Angeles was constructed in 1914 at a cost of $462,043.00 (Jaekle, R. 297).

The depot was built under authority of an order of the Railroad Commission made on petition of the carrier. As the result of public protests on the ground that the elimination of the Southern Pacific's railroad grade crossings on Alameda Street would be delayed or prevented by the construction of a passenger station at said point, the Railroad Commission's order authorizing the demolition of the old Arcade passenger depot at this point and the erection of the present depot contained an express provision

> "that the tearing down and abandonment of said old depot, and the erection of said new depot, and the taking up, relocating and placing of new trackage in connection with said new depot, or the approval of this Commission therefor, shall never be used as a defense against the separation of grade crossings in the State of California." (*Application of Southern Pacific Company,* Volume 3, Opinions and Orders of Railroad Commission of California; pp. 927, 930; Exh. 1 of California Railroad Commission (Sachse Report) pp. 90, 233-5, separately certified and forwarded, R. 7).

The public interest and public safety urgently require the elimination from Alameda Street of all passenger operations. This is conceded by all parties,

including the Southern Pacific. This will require either getting into the Arcade site by means of an overhead viaduct one mile long from across the Los Angeles River (the plan proposed by the Southern Pacific and found by both the Interstate Commerce Commission and the California Commission to be against the public interest) or the removal of the Southern Pacific passenger depot to a location north of Alameda Street in conjunction with the other steam carriers, whereupon it will become unnecessary for the passenger trains to run along Alameda Street and that problem will thereupon be automatically solved (the plan approved by both the Federal and the State Commissions).

The carriers rely on the Railroad Commission's said order of 1913 and on comments made by the Commission's engineers in 1919 to show that the Arcade station building is at this time adequate, but the enormous increase in the population and passenger traffic of Los Angeles since those years has been such that the building is rapidly becoming inadequate. An inspection any day of the year during peak hours shows that the building has actually reached its capacity or will do so shortly (Sachse, R. 260). There is a very definite tendency now toward overcrowding the waiting room between the hours of 7 and 8 P. M. prior to the departure of such important trains as the Padre, Lark and Sunset Limited (Mott, R. 253).

2. ALAMEDA STREET SITUATION.

Alameda Street is the principal north and south street through the industrial section of Los Angeles.

The passenger trains of the Southern Pacific, in traveling along Alameda Street to and from the Arcade Depot, cross at grade every important east and west street in the City of Los Angeles from College Street on the north to East Fifteenth Street on the south, a distance of three miles. This is a *double* track and is the 6.6 miles of main line of railroad referred to on page 29 of the Joint Brief for Appellants.

Mr. F. L. Burckhalter, the First Assistant General Manager of the Southern Pacific Company, testified that there are 43 steam line railroad grade crossings on Alameda Street over which there are 4000 train movements daily. Daily, the tracks of the Southern Pacific on and along Alameda Street are crossed by 125,000 vehicles and 4,000 street cars, containing approximately 330,000 people (R. 299-300).

(NOTE: This would be 120,450,000 people yearly.)

The Southern Pacific has conceded, again and again, that the Alameda Street situation must be remedied.

The Interstate Commerce Commission found that the existing situation on and along Alameda Street is agreed by all parties to be

> "a constant danger to life and limb and a serious inconvenience to an extremely heavy east and west

urban traffic." (*Los Angeles Passenger Terminal Cases* (First Decision), 100 I. C. C. 421, 430; Exh. 5 of City of Los Angeles, separately certified and forwarded, R. 7.)

Subsequently, the Railroad Commission found that the conditions at the Alameda Street crossings "are admittedly becoming worse day by day" and that the situation has become "aggravated by the interjection of certain Salt Lake trains using a portion of that street as a means of temporary access to the Arcade Station." (*Municipal League v. Southern Pacific Company, et al.*, Volume 30, Opinions and Orders of Railroad Commission of California, pp. 151, 157-8; R. 119, 128).

The passenger business not merely of the Southern Pacific but also of the Santa Fe and the Salt Lake is affected by this Alameda Street situation.

All persons coming to or going from the Santa Fe depot from or to points west of Alameda Street must cross the Southern Pacific tracks located and operated thereon. The Santa Fe has its passenger depot so located that its passengers are obliged to go through said scene of danger in order to reach it (Exh. 5 of California Railroad Commission, R. opposite p. 226).

The same situation would be equally applicable to the Salt Lake if that carrier should return to its passenger grounds on the east bank of the Los Angeles River. At the present time, by running its passenger trains into and out of the Southern Pa-

cific's Arcade Station, along Alameda Street south of the Arcade Station, the Salt Lake has aggravated and is aggravating the situation along that part of Alameda Street.

B.

HISTORICAL FACTS.

The historical facts may be very briefly summarized as follows:

1. CALIFORNIA RAILROAD COMMISSION'S FIRST DECISION.

On December 6, 1921, after an exhaustive investigation and voluminous testimony since 1916, the Railroad Commission of California rendered a decision ordering the Southern Pacific, the Santa Fe and the Salt Lake to procure sufficient land within a specified area in the Plaza district in Los Angeles for a union passenger station, to prepare and submit plans for such union station, passenger terminal and necessary facilities, and upon approval of the plans by the Commission, to proceed with the construction of such station and terminal (Volume 20, Opinions and Orders of Railroad Commission of California, p. 937; R. 84-96).

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2. CALIFORNIA SUPREME COURT'S FIRST DECISION.

The carriers thereupon took the Railroad Commission's decision and order to the Supreme Court of California by writs of review. In *The Atchison, To-*

peka and Santa Fe Railway Company v. Railroad Commission of California, 190 Cal. 214, the Supreme Court of California, on December 19, 1922, annulled the Railroad Commission's order on the ground that jurisdiction over the union passenger terminal situation in Los Angeles had, by the Transportation Act of 1920, become vested solely and exclusively in the Interstate Commerce Commission.

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3. COMPLAINT OF CITY OF LOS ANGELES BEFORE INTERSTATE COMMERCE COMMISSION.

The City of Los Angeles, thereupon, in March, 1923, filed with the Interstate Commerce Commission its formal complaint in Docket No. 14,778, asking the Interstate Commerce Commission to make its order directing said carriers, among other matters, to construct and thereafter operate and use a union passenger depot and appurtenances on the site in the Plaza district in Los Angeles theretofore specified by the Railroad Commission of California. The Commission was also asked to make appropriate findings and issue appropriate certificates necessary and incidental to the construction and operation of said union passenger depot.

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4. UNITED STATES SUPREME COURT'S FIRST DECISION.

Thereafter, on April 7, 1924, this Court made its decision in *Railroad Commission of California v.*

Southern Pacific Company, 264 U. S. 331, being a petition by the Railroad Commission of California for a review of said adverse decision of the Supreme Court of California (190 Cal. 214). This Court affirmed the judgment of the Supreme Court of California and held that it would be necessary for the Interstate Commerce Commission to make certain findings and issue certain certificates "as a condition precedent to the validity of any action by the carriers or *of any order by the State Commission*" (p. 346). (Emphasis supplied). This Court expressed its conclusion as follows (p. 348):

> "Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of Section 402 of the Transportation Act, the respondent railways can not be required to provide a new interstate union station and to extend their main tracks thereto *as ordered by the State Railroad Commission.*" (Emphasis supplied.)

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5. INTERSTATE COMMERCE COMMISSION'S FIRST DECISION.

Thereafter, after taking further evidence in said Docket No. 14,778, the Interstate Commerce Commission, on July 6, 1925, rendered its first decision in said docket (*Los Angeles Passenger Terminal Cases,* 100 I. C. C. 421). The Commission made the findings of fact which had been requested by the City of Los Angeles but held that it did not have jurisdiction to make the final order requested by the City requiring the construction of a union passenger depot.

The Commission held that under the existing circumstances it would issue no certificates or further orders at the time, but would retain jurisdiction of said Docket No. 14,778, pending further possible action by the Railroad Commission of California.

(NOTE: For the 6 findings of fact made by the Interstate Commerce Commission in this first decision, see the Note at the end of this section of this brief and Appendix No. 2.)

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6. CALIFORNIA RAILROAD COMMISSION'S SECOND DECISION.

The Railroad Commission of California thereupon reopened the matters pending before it for further consideration and after receiving voluminous additional testimony rendered a further decision on July 8, 1927 (Volume 30, Opinions and Orders of Railroad Commission of California, p. 151; R. 119-134). The Railroad Commission made findings of fact substantially identical with the 6 findings of fact theretofore made by the Interstate Commerce Commission and added 4 further findings.

This is the decision now at issue herein. Sufficient reference has hereinbefore been made to the Commission's order.

(NOTE: For the 4 additional findings of fact made by the California Railroad Commission in this decision, see the Note at the end of this section of this brief and Appendix No. 2. The Interstate Commerce Commission, in its subsequent decision, found that these additional findings of fact of the California Railroad Commission "find sufficient support in the record" (142 I. C. C. 489, 496, R. 135, 145).)

7. INTERSTATE COMMERCE COMMISSION'S SECOND DECISION.

The City of Los Angeles thereupon filed with the Interstate Commerce Commission in said formal complaint Docket No. 14,778 its petition advising the Commission, among other matters, of the most recent action taken by the Railroad Commission of California and asking the Interstate Commerce Commission now to issue its *certificates* in accordance with its findings in its said decision of July 6, 1925 (100 I. C. C. 421), and also to make its *order requiring* the Southern Pacific, the Santa Fe and the Salt Lake to construct and thereafter maintain a union passenger station and appurtenances within that portion of the Plaza district in the City of Los Angeles which had been specified by the California Railroad Commission and to acquire such land, if any, as might be necessary for said purpose, at a total cost of approximately $10,000,000.00 in substantial compliance with the plan identified as California Railroad Commission's Exhibit No. 4B.

The Railroad Commission also filed a petition praying for the issue of such certificates as might be requisite or proper to make its order of July 8, 1927, effective.

After further briefs and oral argument, the Interstate Commerce Commission, on May 8, 1928, rendered its second decision in said Docket No. 14,778 (142 I. C. C. 489; R. 135-153). The Commission adhered to the findings of fact made by it in its said first decision, declared that the additional findings of the California Railroad Commission numbered 7 to 10,

inclusive, hereinbefore referred to; found sufficient support in the record and issued its *certificates* as requested by the City of Los Angeles and the California Railroad Commission. In its majority opinion, however, the Commission again refused to take the final step of *ordering* the carriers to construct and operate a union passenger depot as prayed for by the City of Los Angeles and to consider the evidence bearing on the propriety of making said order. The Commission again based its refusal to make such order or consider the evidence bearing thereon on its view that, as a matter of law, it does not have the jurisdiction to make such order.

(NOTE: For the *certificates* issued by the Interstate Commerce Commission in this decision, see the Note at the end of this section of this brief and Appendix No. 3.)

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8. DECISIONS OF SUPREME COURT AND COURT OF APPEALS OF DISTRICT OF COLUMBIA.

Thereafter, the City of Los Angeles filed in the Supreme Court of the District of Columbia its petition for a writ of mandamus compelling the Interstate Commerce Commission to consider the evidence in the *Los Angeles Passenger Terminal Cases*, 100 I. C. C. 421 and 142 I. C. C. 489, for the purpose of determining whether the Commission should *order* the carriers to build a union passenger station in the City of Los Angeles and, after consideration of the evidence, to make such order therein as the facts and the merits might justify or require.

The Supreme Court of the District dismissed the petition.

The Court of Appeals reversed the judgment and remanded the case for further proceedings (*United States ex rel. City of Los Angeles v. Interstate Commerce Commission,* 34 Fed. (2d) 228).

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9. UNITED STATES SUPREME COURT'S SECOND DECISION.

This Court thereupon granted a writ of certiorari and thereafter, on November 25, 1929, made its decision reversing the Court of Appeals, on the ground that Congress has not conferred upon the Interstate Commerce Commission authority to require the construction of union passenger depots on sites not already devoted to passenger station service (*Interstate Commerce Commission v. United States ex rel. City of Los Angeles,* 280 U. S. 52).

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10. CALIFORNIA SUPREME COURT'S SECOND DECISION.

Thereupon, the Supreme Court of California, which had deferred decision in the case pending before it until this Court should have rendered its decision in the mandamus proceeding, authorized the filing of supplemental briefs and on May 27, 1930, made and filed the decision now on appeal before this Court.

(NOTE: Findings of Fact and Certificates:

The 6 *findings of fact* made by the Interstate Commerce Commission in its first decision and later reaf-

firmed in its second decision may be found in 100 I. C. C. 421, 459-60 and also in the margin in 142 I. C. C. 489, 491-2. See also R. 135, 138-40.

The 4 additional *findings of fact* which were made by the Railroad Commission of California and as to which the Interstate Commerce Commission, in its second decision, said that "they find sufficient support in the record," may be found in Volume 30, Opinions and Orders of Railroad Commission of California, pages 151, 161. See also R. 119, 131-3.

The *certificates* issued by the Interstate Commerce Commission in its second decision of May 8, 1928, in accordance with the decision of this Court in *Railroad Commission of California v. Southern Pacific Company*, 264 U. S. 331, may be found in R. 153-4.

The Court is further referred to the following Appendices to this brief:

Appendix No. 2—Findings of Fact of California Railroad Commission and Interstate Commerce Commission.

Appendix No. 3—Certificates issued by Interstate Commerce Commission.)

C.

TRAFFIC FACTS.

1. VOLUME AND DIRECTION OF PASSENGER TRAFFIC.

The Southern Pacific, Santa Fe and Salt Lake transport into and out of the City of Los Angeles annually in excess of 2,245,000 passengers (Exh. 26 of California Railroad Commission, R. 246).

In transporting these passengers, the carriers operate into and out of the city annually in excess of

12,000 arriving and an equivalent number of departing passenger trains (Exh. 24 of California Railroad Commission, R. 243-4).

The Southern Pacific's main line from the north, the Santa Fe's main line from the north and the Salt Lake's branch line to Pasadena all run under the North Broadway Viaduct at the entrance to the city from the north, the two former lines being located under the viaduct along the west bank of the river and the latter line not a stone's throw away along the east bank. The point at which these tracks run under the North Broadway Viaduct is located only approximately three-fourths of a mile distant northerly from the so-called Plaza area as described in the decisions of the California Railroad Commission and the Interstate Commerce Commission (Exh. 5 of California Railroad Commission, opposite R. 226).

The predominating passenger traffic of the carriers in Los Angeles is to and from the north and east. Sixty-nine (69) per cent of all scheduled main line passenger trains enter Los Angeles by routes north of the Plaza area. Forty-two (42) out of the seventy-eight (78) main line scheduled passenger trains daily pass under the North Broadway Viaduct and twelve (12) run along Alhambra Avenue. Only twenty-four (24) trains, being less than one-third (1-3), enter Los Angeles from the south. Seventy-four (74) per cent, being nearly three-fourths, of all passengers, use routes north of the Plaza area (Hill, R. 232).

2. VOLUME OF UNION DEPOT TRAFFIC.

The carriers have at times urged that the number of passengers transferring between the passenger stations of the steam carriers in Los Angeles is a small number—less than 2 per cent—and that this number does not justify the erection of a union passenger station.

This contention has not been repeated in their brief herein. For that reason, we deem it sufficient merely to refer to the Interstate Commerce Commission's comment that the carriers' figures do not include (a) persons stopping over in Los Angeles or (b) persons transferring at Los Angeles but traveling on separate tickets to and from that point, or (c) persons transferring to and from the Pacific Electric. The Commission referred with approval to the estimates of the California Commission's engineers that "probably 10 per cent of the passengers carried by the steam lines normally transfer from one road to another" and pointed out that this figure "does not include passengers transferring to or from the Pacific Electric" (*Los Angeles Passenger Terminal Cases*, 100 I. C. C. 421, 441-2).

The record in this proceeding sustains the Interstate Commerce Commission's findings (Exh. 1 of California Railroad Commission, (Sachse Report) 248, 258, separately certified and forwarded, R. 7); Sachse, R. 262; Jaekle, R. 298).

D.

FINANCIAL FACTS.

1. GROSS AND NET COSTS OF PROPOSED UNION PASSENGER STATION.

The California Railroad Commission found that the *gross* cost of compliance by the carriers with its order would be $10,000,000. Such compliance would release from railroad passenger uses valuable lands belonging to the Southern Pacific and the Santa Fe, which lands could then be sold for at least $4,500,000, thus resulting in a *net* cost of $5,500,000 for the project (*Municipal League v. Southern Pacific, et al.*, Volume 30, Opinions and Orders of Railroad Commission of California, pp. 151, 159; R. 119, 130).

These findings are supported by voluminous and overwhelming evidence.

The Interstate Commerce Commission found that the total investment of the carriers in passenger facilities under the Plaza plan would be approximately $9,500,000 and that this sum would be reduced by the market value of salvaged lands to approximately $5,500,000. The Commission found that the total investment under the plan proposed by the Southern Pacific and the Salt Lake would have been $11,000,000 (*Los Angeles Passenger Terminal Cases* (First Decision), 100 I. C. C. 421, 456-7).

The investment under the Plaza plan would be very moderate for a city of the size of Los Angeles, "much

less than for similar facilities in any city of the same size" (Sachse, R. 266).

The carriers have not, in their brief herein, questioned the accuracy of the findings as to the cost of the project, either gross or net, nor have they urged that the amount is unreasonable, nor have they urged that the *amount* of the cost, either gross or net, is such as to deprive them of any right claimed by them.

Hence, we shall not pursue this subject further.

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2. INTERSTATE COMMERCE COMMISSION'S FINDING AS TO FINANCIAL ABILITY OF CARRIERS.

In the *First Los Angeles Union Station Case, Railroad Commission of California vs. Southern Pacific Company,* 264 U. S. 331, the Court said (p. 347):

> "We think it clear that in such an extension of main lines with their terminals the Interstate Commerce Commission is required by the Act to make a finding that the expense involved will not impair the ability of the carriers concerned to perform their duty to the public."

The Interstate Commerce Commission thereupon made such finding based on evidence submitted to it (*Los Angeles Passenger Terminal Cases,* 100 I. C. C. 421, 453-4, 460) and subsequently reaffirmed it (*Los Angeles Passenger Terminal Cases,* 142 I. C. C. 489, 496; R. 135, 139, 145).

We do not understand that the accuracy of this finding has ever been challenged and, for that reason, shall not develop the subject further.

E.

CARRIERS' STATEMENT OF THE CASE.

We shall now refer very briefly to a number of matters in the "Statement of the Case" appearing in the "Joint Brief for Appellants" on file herein (pp. 4-15), which matters we believe call for comment.

At page 4, the carriers say that at the commencement of the proceedings which culminated in the order under review, the carriers had separate passenger stations in the City of Los Angeles "none of which is in the vicinity of the others." We believe that a glance at the map which is Exh. 5 of the California Railroad Commission, reproduced opposite page 226 of the Record, will show the inaccuracy of this statement. As appears from this map, the old Salt Lake passenger depot was located directly across the river from the Santa Fe depot, less than ¼ mile away, while the Santa Fe depot is located only between ½ mile and ¾ mile from the Southern Pacific's depot. As will be further noted from said map, these locations, as well as the Plaza site, are all within the general "Railroad and Industrial District" of Los Angeles.

At page 6, the reference to the proceedings instituted before the Railroad Commission should be

amplified by stating that request was also made for the construction of a union passenger station (see complaint of Central Development Association, as amended, R. 19-21).

At page 8, the reference to the first decision rendered by the Interstate Commerce Commission in the *Los Angeles Passenger Terminal Cases,* 100 I. C. C. 421, is inaccurate. The Commission issued no *certificates* in that decision. It made 6 *findings* but deferred the issue of *certificates* to await such further action, if any, as the California Railroad Commission might take (pp. 459-461). In its second decision, the Commission, after re-affirming its *findings,* went a step further and issued the *certificates* which this Court had specified in the *First Los Angeles Union Station Case, Railroad Commission of California v. Southern Pacific Company,* 264 U. S. 331, 344, 348. The certificates appear on pages 153-4 of the Record herein and in appendix No. 3 to this brief.

At page 11, appears a reference to a joint use of lands and other properties valued at $28,050,691 and to an ultimate capital expenditure for all recommendations of from $25,000,000 to $45,000,000. Merely to avoid possible confusion, we desire to point out that these figures relate to a so-called "ultimate plan" worked out by engineers of the California Railroad Commission, covering a large number of various projects in Los Angeles County, of which the union passenger station project then recommended by the engineers, was to cost less than one-third of the total

(Exh. 1 of California Railroad Commission, p. 15, separately certified and forwarded, R. 7). The plan was never adopted by the California Railroad Commission. As already pointed out, the construction ordered by the California Commission, will cost *gross* $10,000,000 and *net* not to exceed $5,500,000.

At page 11, the carriers also say that with the exception of the reduced estimated cost and the requirement of the elimination of grade crossings over the Salt Lake and Santa Fe tracks on the river banks, "the State Commission's order under review is practically identical with its original orders." As already pointed out, the Railroad Commission never made an order calling for the expenditure of $28,050,691 or any sum in excess of $10,000,000 gross. Furthermore, the California Railroad Commission's order now here on appeal differs from the first order, among other matters, in the vital respect that it is expressly declared that it is to become effective only "from and after the promulgation by the Interstate Commerce Commission of an order issuing and granting proper and sufficient certificates or other appropriate order or orders covering and authorizing the construction, extensions and abandonments herein authorized or directed * * *" (R. 134). Again, this order refers to a definite plan shown on Exhibit 4B and specifies a definite gross cost of $10,000,000, whereas the first order did neither. There are other significant differences, but we consider it unnecessary to pursue the subject further.

At page 12, the carriers say that the California Commission's order "involves the acquisition of new land, about forty acres, a portion of which is owned by some of the railroads * * *." The facts are that the land included within the Plaza area shown on Exh. 4B of the Railroad Commission amounts to 37 acres and that the carriers, at the time the evidence herein was submitted, already owned 26.87 acres within this area. In other words, the carriers already owned more than 70 per cent of the total area (Exh. 49 of California Railroad Commission, separately certified and forwarded, R. 8). Reference to said map and a comparison with Exh. 4B will show that with slight exceptions the land necessary for the entire physical structures in connection with the union station plan is already owned by the carriers and that the remaining property necessary to be acquired is a minor quantity of land adjacent to the lands already owned and necessary merely to "round out" the site.

At page 13, the carriers state that the petition which the City of Los Angeles filed with the Interstate Commerce Commission in said Docket No. 14,778, following the California Railroad Commission's second decision, asked merely for an order requiring the construction of a union passenger station. As a matter of fact, the City of Los Angeles asked also for the issuance of certificates in accordance with the findings in 100 I. C. C. 459-460 and for such additional findings, certificates and orders as might be just and equitable and in the public interest (*Los Angeles*

Passenger Terminal Cases, 142 I. C. C. 489, 494; R. 135, 142).

At page 15, the carriers erroneously state what the Supreme Court of California held. The Supreme Court did not hold that the State Commission's order did not violate the constitutional rights of the carriers "in requiring them to abandon adequate facilities." As a matter of fact, the record before the State Commission, as hereinbefore pointed out, showed that the existing facilities of the carriers are not adequate or proper. The Supreme Court did not hold that the carriers could be required to extend their main lines of railroad "to reach new territory not theretofore served by them." The Commission's order does not provide for any extension into *new territory* not theretofore served by them. Finally, the Supreme Court did not hold that the Railroad Commission's order required any railroad to permit another railroad to use its main line tracks or facilities without compensation. The Railroad Commission's order contained no such requirement and the Supreme Court said nothing to the contrary.

III. Summary of Argument.

A. California Railroad Commission had Jurisdiction to make the order.

1. Prior to Transportation Act, 1920, California Railroad Commission clearly had the jurisdiction.

2. In enacting the Transportation Act, 1920, Congress did not intend to deprive and did not deprive the states of jurisdiction to require the construction and operation of union passenger stations and the necessary incidents, on new sites.

   a. General rule.

   b. Intention of Congress as to union passenger stations.

3. The Railroad Commission's order does not contravene the Commerce Clause of the Federal Constitution or any provision of the Interstate Commerce Act.

   a. Analysis of the Railroad Commission's order.

   b. The California Railroad Commission has not invaded a field occupied by Congress.

      (1) Union station.

      (2) Essential incidents of a union station.

   c. This is not a case of one commission giving effect to the orders of another commission or of divided authority in the same jurisdiction.

B. Interstate Commerce Commission's Certificates Are Valid.

1. The certificates described.

2. The certificates are valid.

3. The validity of the certificates can not be attacked collaterally.

C. California Railroad Commission's Order is Just and Reasonable and Does Not Deprive any Carrier of Any Right Under the Fourteenth Amendment to the Federal Constitution.

1. Under the police power, public authority may require the construction and operation of union passenger stations whenever the power has been conferred and, on the facts, such order would be reasonable.
   a. Union passenger station decisions of state courts.
   b. Decisions of Supreme Court of United States.
2. The authorities on which the carriers rely are not in point.
3. The carriers are in error in urging that the Railroad Commission's order requires the joint use of any of their property without compensation first paid.
4. There is no foundation for the contention of the carriers that the Railroad Commission acted under the guise of exercising power over railroad grade crossings.
5. The contentions of the carriers (a) that the Southern Pacific is being directed to take action for the purpose of providing the Santa Fe and the Salt Lake with adequate passenger depots and (b) that the Santa Fe and the Salt Lake are being directed to take action for the purpose of eliminating the Southern Pa-

cific's grade crossings on Alameda Street are contrary to the facts and without any merit.

a. Santa Fe.

b. Salt Lake.

c. Southern Pacific.

d. Sharing of cost.

IV. Argument.

A.

CALIFORNIA RAILROAD COMMISSION HAD JURISDICTION TO MAKE THE ORDER.

1. PRIOR TO TRANSPORTATION ACT, 1920, CALIFORNIA RAILROAD COMMISSION CLEARLY HAD THE JURISDICTION.

Prior to the enactment of the Transportation Act, 1920, the Railroad Commission of California had full power and authority to make an order for the construction, maintenance and operation by the Southern Pacific, the Santa Fe and the Salt Lake of a union passenger station in the Plaza Area in Los Angeles.

Constitution of California, Article XII, Section 22;

Constitution of California, Article XII, Section 23;

Public Utilities Act of California (Stats. 1915, p. 115), Section 13(b), Section 22(a), Section 30, Section 31, Section 36 and Section 41.

These constitutional and statutory provisions are set forth in the Appendix to the Joint Brief for Appellants on file herein. We shall not extend this brief by repeating these citations, but by reason of its importance in these proceedings we are reprinting Section 36 of the Public Utilities Act in Appendix No. 4.

As the Court will note from a study of said Section 36, the section covers the case of joint construction by two or more public utilities. It gives the Railroad Commission specific authority to fix the *site* of any *new* structure. It sets up the necessary machinery for determining the portion of the cost of the new structure to be borne by each of the participating public utilities. In this respect, the statute completely meets the test prescribed by this Court in its decision in the *Second Los Angeles Union Station Case, Interstate Commerce Commission v. United States ex rel. City of Los Angeles,* 280 U. S. 52, 69, in the matter of the establishment of "tribunals to apportion the expenditures and cost as between the carriers."

It seems quite clear from the language of the section that it was drafted to cover the precise situation of union passenger stations to be erected on possible new sites by joint action of several railroads.

Prior to 1920, the carriers who are the appellants herein uniformly took the position that the California Railroad Commission had ample authority, under Section 36 of the Public Utilities Act and related stat-

utes, to compel the construction and operation of union passenger stations.

Mr. Durbrow, attorney for the Southern Pacific Company, said (R. 218-19):

> "I shall contend that, so far as the establishment of a union depot is concerned, that this Commission has been vested with the sole and exclusive power to determine that question under the provisions of section 36 of the Public Utilities Act, and if there is any power in any tribunal in the State of California, court, commission or municipal council, that power must be vested in this Commission under the laws as they now exist."

At R. 219:

> "Commissioner THELEN: You say that *if* there is power in any tribunal, it is in the Railroad Commission. Are you prepared to say whether, in your opinion, that power has been vested in the Railroad Commission?
>
> "Mr. DURBROW: To be frank, in my judgment, by the provisions of section 36 that power has been vested in the Commission."

At R. 219:

> "Mr. DURBROW: My conception of the law is that that power (to compel construction of union passenger depots) has been conferred upon commissions, not only of this state but of other states, and that it is held to be a delegation by the legislature of the police power of the state."

Continuing:

> "Mr. DURBROW: I want to say now, I didn't say it, I tried to, that I believe that where a legislature of a state delegates the power to a commission to compel the establishment of a union depot, that the commission may exercise that power subject, of course, always to constitutional safeguards, and *it is presumed that the Commission will exercise its power in conformity with those.*" (Emphasis supplied.)

The representatives of the other carriers concurred in the views of Mr. Durbrow (R. 219).

If there was ever a doubt in the matter, it was conclusively set at rest by the Supreme Court of California in the decision now before this Court. In *Atchison, Topeka & Santa Fe Railway Company v. Railroad Commission of the State of California,* 209 Cal. 460, 79 Cal. Dec. 457, 463, R. 184, 192-3, the Court thus passed upon the force and effect of the appropriate provisions of the Constitution of California and of the Public Utilities Act of that state:

> "The Constitution of this state expressly provides that the authority of the legislature to confer powers upon the Railroad Commission is plenary and unlimited by any provision of the Constitution (Constitution of Calif., Art. XII, Secs. 22 and 23; *Pacific Tel. and Tel. Co. v. Eshleman, et al.,* 166 Cal. 640.)
>
> "*There can be no question that the legislature* by the Public Utilities Act (Stats. 1915, chap.

91, p. 115), secs. 13b, 22a, 30, 31 and, particularly, by section 36 thereof, *has conferred upon the Railroad Commission powers broad enough to include the ones sought to be exercised by said Commission herein.*" (Emphasis supplied.)

Hence, at least up to the enactment of the Transportation Act, 1920, the California Railroad Commission had ample jurisdiction to make an order requiring the railroad companies who are the appellants herein to construct and operate a union passenger station in Los Angeles.

It follows that on the question of the California Railroad Commission's jurisdiction the only remaining question is whether there is anything in the Transportation Act, 1920, which deprives the Railroad Commission of its jurisdiction, bearing in mind the fact that the Interstate Commerce Commission has already made all necessary findings and issued all necessary certificates.

This is a question of the *purpose* and *intention* of Congress when it enacted the Transportation Act, 1920.

2. IN ENACTING THE TRANSPORTATION ACT, 1920, CONGRESS DID NOT INTEND TO DEPRIVE AND DID NOT DEPRIVE THE STATES OF JURISDICTION TO REQUIRE THE CONSTRUCTION AND OPERATION OF UNION PASSENGER STATIONS AND THE NECESSARY INCIDENTS, ON NEW SITES.

a. General rule.

The general rule on the subject was correctly stated by counsel for the Interstate Commerce Commission in his brief filed with this Court in *Interstate Commerce Commission v. United States ex rel. City of Los Angeles,* 280 U. S. 52, as follows:

> "It is well settled that, while the federal authority under the commerce clause is paramount even though *trenching* upon the reserved power of a State, yet *where Congress' occupation of a field is only partial a State is left free to act as to matters not covered by or repugnant to the Federal legislation. Savage v. Jones,* 225 U. S. 501, 533, and cases therein cited. *Sligh v. Kirkwood,* 237 U. S. 52; *M. K. & T. Ry. v. Harris,* 234 U. S. 412; *Missouri Pac. Ry. v. Larrabee Flour Mills Co.,* 211 U. S. 612. It is also settled that *federal legislation* so *trenching* upon the power of a state *will be strictly construed,* that is, that it will be taken to supersede State authority only to the extent necessary to avoid defeating express provisions of the Acts of Congress, *M. K. & T. Ry. v. Haber,* 169 U. S. 613, 623; *Savage v. Jones, supra,* 533; *Ill. Cent. R. R. Co. v. Pub. Utilities Comm.,* 245 U. S. 493, 510; *Lehigh Valley R. Co. v. Pub. Utility Comm.,* 278 U. S. 24, 35." (Emphasis supplied.)

In the leading case of *Savage v. Jones,* 225 U. S. 501, 533, the present Chief Justice stated the general rule as follows:

> "Is, then, a denial to the state of the exercise of its power for the purposes in question necessarily implied in the Federal statute? For when the question is whether a Federal act overrides a state law, the entire scheme of the statute must, of course, be considered, and that which needs must be implied is of no less force than that which is expressed. If the purpose of the act cannot otherwise be accomplished—if its operation within its chosen field else must be frustrated and its provisions be refused their natural effect—the state law must yield to the regulation of Congress within the sphere of its delegated power. *Texas & P. R. Co. v. Abilene Cotton Oil Co.,* 204 U. S. 426, 51 L. ed. 553, 27 Sup. Ct. Rep. 350, 9 Ann. Cas. 1075; *Northern P. R. Co. v. Washington,* 222 U. S. 370, 378, ante, 237, 239, 32 Sup. Ct. Rep. 160; *Southern R. Co. v. Reid,* 222 U. S. 424, 436, ante, 257, 260, 32 Sup. Ct. Rep. 140.
>
> "But the intent to supersede the exercise by the state of its police power as to matters not covered by the Federal legislation is not to be inferred from the mere fact that Congress has seen fit to circumscribe its regulation and to occupy a limited field. In other words, such intent is not to be implied unless the act of Congress, fairly interpreted, is in actual conflict with the law of the state. This principle has had abundant illustration. *Chicago, M. & St. P. R. Co. v. Solan,* 169 U. S. 133, 42 L. ed. 688, 18 Sup. Ct. Rep. 289; *Missouri, K. & T. R. Co. v. Haber,* 169 U. S. 613,

42 L. ed. 878, 18 Sup. Ct. Rep. 488; *Reid v. Colorado,* 187 U. S. 137, 47 L. ed. 108, 23 Sup. Ct. Rep. 92, 12 Am. Crim. Rep. 506; *Pennsylvania R. Co. v. Hughes,* 191 U. S. 477, 48 L. ed. 268, 24 Sup. Ct. Rep. 132; *Crossman v. Lurman,* 192 U. S. 189, 48 L. ed. 401, 24 Sup. Ct. Rep. 234; *Asbell v. Kansas,* 209 U. S. 251, 52 L. ed. 778, 28 Sup. Ct. Rep. 485, 14 Ann. Cas. 1101; *Northern P. R. Co. v. Washington,* 222 U. S. 370, 379, ante, 237, 240, 32 Sup. Ct. Rep. 160; *Southern R. Co. v. Reid,* 222 U. S. 424, 442, ante, 257, 262, 32 Sup. Ct. Rep. 140."

In *Missouri, Kansas and Texas Railway Company v. Haber,* 169 U. S. 613, Mr. Justice Harlan said (p. 623):

"May not these statutory provisions stand without obstructing or embarrassing the execution of the act of Congress? This question must of course be determined with reference to the settled rule that a statute enacted in execution of a reserved power of the State is not to be regarded as inconsistent with an act of Congress passed in the execution of a clear power under the Constitution, unless the repugnance or conflict is so direct and positive that the two acts cannot be reconciled or stand together. *Sinnot v. Davenport,* 22 How. 227, 243."

In *Illinois Central Railroad Company v. State Public Utilities Commission of Illinois,* 245 U. S. 493, Mr. Justice Van Devanter stated the rule as follows (p. 510):

"In construing Federal statutes enacted under the power conferred by the commerce clause of

> the Constitution the rule is that it should never be held that Congress intends to supersede or suspend the exercise of the reserved powers of a state, even where that may be done, unless, and except so far as, its purpose to do so is clearly manifested. *Reid v. Colorado,* 187 U. S. 137, 148, 47 L. ed. 108, 114, 23 Sup. Ct. Rep. 92, 12 Am. Crim. Rep. 506; *Cummings v. Chicago,* 188 U. S. 410, 430, 47 L. ed. 525, 531, 23 Sup. Ct. Rep. 472; *Savage v. Jones,* 225 U. S. 501, 56 L. ed. 1182, 32 Sup. Ct. Rep. 715; *Missouri, K. & T. R. Co. v. Harris,* 234 U. S. 412, 419, 58 L. ed. 1377, 1382, L. R. A. 1915E, 942, 34 Sup. Ct. Rep. 790. This being true of an act of Congress, it is obvious that an order of a subordinate agency, such as the Commission, should not be given precedence over a state rate statute otherwise valid, unless, and except so far as, it conforms to a high standard of certainty."

In *International Shoe Company v. Pinkus,* 278 U. S. 261, Mr. Justice Butler said (p. 265):

> "The general rule is that an intention wholly to exclude state action will not be implied unless, when fairly interpreted, an Act of Congress is plainly in conflict with state regulation of the same subject. *Savage v. Jones,* 225 U. S. 501, 533; *Illinois Central R. R. Co. v. Public Utilities Commission,* 245 U. S. 493, 510; *Merchants Exchange v. Missouri,* 248 U. S. 365."

Finally, in *Chicago v. North Western Railway Company v. Lindell,* 281 U. S. 14, Mr. Justice Butler said (p. 18):

> "The Act (Interstate Commerce Act) ought not to be construed to put aside state laws and long established practice in respect to pleading unless the *intention* of Congress so to do is plain." (Emphasis supplied).

b. Intention of Congress as to union passenger stations.

In determining the *purpose* and *intent* of Congress on the subject of union passenger stations, reference may be had both to the proceedings of Congress during the consideration by it of the Transportation Act, 1920, and to the language of the Act itself.

Referring first to the proceedings before Congress, it is well known that while the Esch-Cummins bill was being debated on the floor of the House of Representatives, Congressman McClintic of Oklahoma offered the following amendment (Congressional Record, November 15, 1919, 66th Congress, 1st Session, Vol. 58, p. 8578):

> "Provided further, that the Commission is hereby given authority to require a carrier to maintain his present arrangement or to make new arrangements relative to the joint use of depots, upon such terms as shall be found by the Commission to be just and reasonable. No carrier shall be allowed to discontinue the use of a depot in connection with another carrier until proper application has been made to the Commission."

The purpose of this amendment, as explained by Congressman McClintic (pages 8578-9) was to give the Interstate Commerce Commission jurisdiction

over union passenger depots. Chairman Esch opposed the adoption of the amendment on the ground that jurisdiction over such matters had always been vested in the various states and should continue to be exercised by them. Chairman Esch said (Congressional Record, November 15, 1919, p. 8579):

> "Mr. Chairman, the matter which the gentleman from Oklahoma seeks to reach by his amendment lies almost wholly within the police power of the several states. There have been amendments offered to this bill seeking to preserve such police powers. The committee in framing the bill has sought not to encroach upon such powers. The matters of depots and joint use of depots is practically in the jurisdiction of the state commissions, and all but one of the states have such commissions. In such small matters the detail should be left within the jurisdiction of the state authorities, who know the situation, know the conditions, and know how best to meet the needs. There is, however, a provision in this bill providing for the joint use of terminals."

Mr. McClintic thereupon offered to withdraw the amendment, but another member insisted on having a vote thereon. Thereafter his amendment, which would have conferred upon the Interstate Commerce Commission jurisdiction over union passenger depots, was rejected (Congressional Record, November 15, 1919, p. 8582).

This would seem to indicate that the Congress saw fit to leave the federal commission without mandatory

jurisdiction where passenger stations are to be erected on new sites, understanding that the matter of union stations would continue within the jurisdiction of the state commissions, subject only to certain findings to be made and certain certificates to be issued by the Interstate Commerce Commission.

Referring now to the language of the Act itself, this Court pointed out in the *Second Los Angeles Union Station Case, Interstate Commerce Commission v. United States ex rel. City of Los Angeles,* 280 U. S. 52, that the Interstate Commerce Act nowhere refers specifically to union passenger stations.

Nowhere in the Act has Congress conferred on the Interstate Commerce Commission the power to require the construction of a union passenger station on a new site or of any of the essential incidents of such station.

On the contrary, the Act *expressly reserves to the states* the right to require just and reasonable freight and passenger *service* for intrastate business, except in so far as such requirement is *inconsistent* with any lawful order of the Interstate Commerce Commission made under the provisions of the Interstate Commerce Act. This proviso is a part of paragraph 17 of Section 1 of the Interstate Commerce Act and reads as follows:

> "Provided, however, That nothing in this Act shall impair or affect the right of a State, in the exercise of its police power, to require just and reasonable freight and passenger service for

> intrastate business, except in so far as such requirement is inconsistent with any lawful order of the Commission made under the provisions of this Act."

On the subject of this proviso, the Supreme Court of North Carolina, in a passage quoted with approval by the Interstate Commerce Commission (100 I. C. C. 421, 428-9) said (*North Carolina Corporation Commission v. Southern Railway Co.*, 185 N. C. 435, 459, 117 S. E. 563):

> "We have examined the act of 1920 carefully, and we do not find any provision therein which grants to the Interstate Commerce Commission, either expressly or by clear implication, the power, or which makes it its duty, to require the erection of passenger stations. It is not claimed in this case that such an order has been made by the Interstate Commerce Commission. The right of the state, then, to act in this particular is expressly preserved to it by Transportation Act of 1920, page 402, subsec. 17 (41 Stat. at Large, p. 477) as follows: 'Provided, however, That nothing in this act shall impair or affect the right of a state, in the exercise of its police power, to require just and reasonable freight and passenger service for intrastate business, except in so far as such requirement is inconsistent with any lawful order of the commission made under the provisions of this act.'"

In the light of the proceedings before Congress while the Transportation Act was being enacted, the language of the Act itself, and the decisions of this

Court in the *First* and the *Second Los Angeles Union Station Cases* (to which more detailed reference will hereinafter be made) we believe that it is clear that the jurisdiction of the states to make orders requiring the construction of union passenger stations on new sites was not taken away by the mere fact that before such orders may be effective, it is necessary for the Interstate Commerce Commission to have made the findings and issued the certificates which this Court specified in its decision in the *First Los Angeles Union Station Case.*

As the California Supreme Court said in reply to the argument of the carriers (*Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of the State of California,* 209 Cal. 460, 79 Cal. Dec. 457, 462, R. 184, 192):

> "The most decisive answer to this question is that the language of the decision of the Supreme Court of the United States, in the first Los Angeles Terminal case, is to the effect that an order is to be made by the state commission, conditioned only upon the proper findings and certificates of the Interstate Commerce Commission."

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3. THE RAILROAD COMMISSION'S ORDER DOES NOT CONTRAVENE THE COMMERCE CLAUSE OF THE FEDERAL CONSTITUTION OR ANY PROVISION OF THE INTERSTATE COMMERCE ACT.

On pages 27 to 61 of their brief, the carriers urge that the Railroad Commission's order contravenes the

Commerce Clause of the Federal Constitution and certain provisions of the Interstate Commerce Act.

We submit that the California Supreme Court ruled correctly when it decided that there is no merit in these contentions.

a. Analysis of Railroad Commission's order.

The carriers first seek to make it appear that the Railroad Commission's order requires them to perform 7 different, distinct, separate and co-ordinate classes of acts (Joint Brief of Appellants, pp. 27-9).

Such is, of course, not the fact.

The order requires just one principal act, namely, the construction of a union passenger station. In so far as the other acts are to be performed at all, they are merely what this Court has aptly called the *"essential incidents"* of such station (*First Los Angeles Union Station Case,* 264 U. S. 331, 341).

The California Railroad Commission itself referred to these other matters as being merely "necessary and incidental" to the use of the passenger station (R. 119, 133).

It may aptly be said that these other acts are merely "the tail" which "goes with the hide".

b. The California Railroad Commission has not invaded a field occupied by Congress.

The carriers then seek to make it appear that the California Railroad Commission's order invaded a field occupied by Congress.

We submit that this is not the fact, either as to the union station itself or as to its "essential incidents".

(1) *Union Station.*

In *Interstate Commerce Commission v. United States ex rel. City of Los Angeles,* 280 U. S. 52, this Court decided that Congress has not conferred upon the Interstate Commerce Commission the authority to require carriers to construct a union passenger station upon a new site.

The carriers now urge that in some way or other Congress has, nevertheless, so "occupied the field" as to preclude further action by the states.

If this argument is sound, the result will be that no public authority, either State or Federal, any longer has the authority, heretofore clearly possessed by the states, of requiring the construction of union passenger stations on new sites, however urgently the public convenience and necessity may require such construction.

We submit that this startling proposition is not the law and that the authorities cited by the carriers do not sustain their position.

It is true that in *Atchison, Topeka and Santa Fe Ry. Co. v. Railroad Commission of the State of California* (First Decision), 190 Cal. 214, the Supreme Court of California held that by reason of the enactment of the Transportation Act, 1920, the power and authority of the California Railroad Commission to make an order directing the Southern Pacific, the

Santa Fe and the Salt Lake to construct and operate a union passenger station in the City of Los Angeles had been *"divested"* and had become *"vested"* in the Interstate Commerce Commission. However, following this Court's decisions in the *First* and the *Second Los Angeles Union Station Cases,* the Supreme Court of California felt obligated to reverse and did reverse itself in the decision now before this Court on appeal.

The carriers also refer to the decisions of this Court in the *First* and the *Second Los Angeles Union Station Cases,* but we submit that those decisions are directly contrary to their contentions.

As we read those decisions, and as the Supreme Court of California read them, they hold that the jurisdiction of the California Railroad Commission continued and may be exercised and that its orders may become effective when the Interstate Commerce Commission has made the findings and issued the certificates specified by this Court in the *First Los Angeles Union Station Case.*

Thus, in the *First Los Angeles Union Station Case,* this Court said (264 U. S. 331, 346) that the situation comes

> "within paragraphs 18 to 21 of Section 402 and requires a certificate of the Interstate Commerce Commission as a condition precedent to the validity of any action of the carriers or *of any order by the State Commission.*" (Emphasis supplied.)

Again, at page 348, in the same case, this Court said:

> "Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of Section 402 of the Transportation Act, the respondent railways can not be required to provide a new interstate union station and to extend their main tracks thereto *as ordered by the State Railroad Commission.*" (Emphasis supplied.)

In the *Second Los Angeles Union Station Case,* this Court explained its first decision as declaring that the necessary certificates must first be secured from the Interstate Commerce Commission

> "as a condition precedent to the validity of any action by the carriers or *of any order by the State Railroad Commission,* and that until the Interstate Commerce Commission had acted under those paragraphs, the carriers could not be required to provide a new union station or to extend their main tracks thereto *as ordered by the State Railroad Commission.*" (Emphasis supplied). (*Interstate Commerce Commission v. United States ex rel. City of Los Angeles,* 280 U. S. 52, 53).

In these references to an order of the State Railroad Commission, to be effective upon the making of the necessary findings and the issuance of the necessary certificates by the Interstate Commerce Commission, we believe that there is manifest a conviction on the part of this Court that Congress did not intend to take from the states the power to make such an order. Otherwise, we do not believe that this Court would have referred several times, in each of its two de-

cisions, to the authority of the State Railroad Commission as an existing and continuing jurisdiction.

In the light of these two decisions, we believe that there is now no longer any reasonable doubt that Congress, in enacting the Transportation Act, 1920, did not take from the State of California the jurisdiction to make the mandatory order which the California Railroad Commission actually made, to be effective upon findings to be made and certificates to be issued by the Interstate Commerce Commission.

This was the opinion of the California Supreme Court (79 Cal. Dec. 457, 462, R. 184, 192):

> "It is settled, therefore, by the highest judicial authority in the land, that the Transportation Act has not transferred to the Interstate Commerce Commission the power to make the order involved here.
>
> "It is urged, however, by petitioners that even though it be true that the Interstate Commerce Commission has no power to enter the order for the erection and maintenance of a union station, the fact that it has some powers given it over the general subject matter indicates that Congress 'has entered the field' of regulation respecting the establishment of union stations to such an extent as to automatically terminate the state's power to deal with that subject. The most decisive answer to this position is that the language of the decision of the Supreme Court of the United States in the first Los Angeles Terminal case, is to the effect that an order is to be made by the state commission, conditioned only upon the

proper findings and certificates of the Interstate Commerce Commission."

(2) *Essential Incidents of a Union Station.*

The carriers next urge that whatever may be said as to the union station itself, Congress has, nevertheless, occupied the field with respect to certain matters which, in the California Railroad Commission's order, are merely *incidental* to the construction of the union passenger station. These are matters such as extensions, improvements and changes, in so far as these matters are necessarily involved in the union station project (Joint Brief for Appellants, pp. 35-41).

In other words, the carriers now hope, as a last resort, to prevail in their opposition to public authority by reliance on a fancied purpose or intention of Congress to "occupy the field" as to the "essential incidents" of the union passenger station, even though it appears clearly that as to the station itself the field has not been thus occupied.

In reply, we invite the Court's attention to the following matters:

(1) The carriers have failed to point to any language in the Interstate Commerce Act granting to the Commission, in the matter of the construction of union passenger stations on new sites, the power to *require* the performance of any of said *incidental* acts.

While the Interstate Commerce Act contains, in various portions thereof, *general language* referring to the construction of facilities, the extensions and

abandonments of lines and the joint use of tracks, this Court very definitely held in the *Second Los Angeles Union Station Case,* in commenting on *Alabama & Vicksburg Railway Company v. Jackson & Eastern Railway Company,* 271 U. S. 244, that such language is too general to be properly construed as referring to union passenger stations (*Second Los Angeles Union Station Case,* 280 U. S. 52, 66-7).

(2) To us, it seems clearly untenable to urge that while the states have retained the power to require the construction of union passenger stations, under proper circumstances, Congress has made this power nugatory by entering the field with reference to the "essential incidents" of such stations. There is no authority whatsoever in support of such contention and it impresses us as most illogical and unreasonable.

The carriers next quote authorities in support of the proposition that when Congress has occupied the field, a state statute is superseded even though the Federal statute does not cover the subject as fully and completely as the state law (Joint Brief for Appellants, pp. 42-54). We do not quarrel with those authorities. We believe that the only appropriate comment is that they are inapplicable for the reason, already shown, that Congress has not entered the field of mandatory construction of union passenger stations and essential incidents on new sites. All that Congress has done is to provide, quite wisely, that before the exercise of the power of the states shall be effec-

tive, the Interstate Commerce Commission shall have found the *facts* with reference to (a) the public convenience and necessity and (b) the financial ability of the carriers to undertake the project.

c. This is not a case of one commission giving effect to the orders of another commission or of divided authority in the same jurisdiction.

Finally, the carriers argue that this is a case of one commission giving effect to the orders of another commission, or of divided authority in the same jurisdiction.

Such is not the fact.

The authority of the Interstate Commerce Commission is purely *factual* and *permissive*. It *finds* and *certifies* to important facts in connection with the proposed union station construction. The function of the California Railroad Commission, on the other hand, is *mandatory* in character. The Commission *requires* that the union passenger station be constructed.

There is nothing unlawful or even unusual in the performance by these two governmental agencies of these distinct and separate functions.

This is simply one of many instances in which two public authorities, each acting lawfully within its own jurisdiction, must take favorable action before a certain result may be effected.

In the present instance, we have a particularly statesmanlike co-ordination of distinct and separate

functions as between the Federal and the State authorities.

A number of years ago, a somewhat similar situation involving action by both *state* and *municipal* authorities, came before the Supreme Court of California. In *Oro Electric Corporation v. Railroad Commission,* 169 Cal. 466, the Court drew attention to the fact that before a new electrical utility could do business within the City of Stockton, California, it would be necessary for it to secure both a certificate of public convenience and necessity from the Railroad Commission authorizing it to engage in business within the city and a franchise from the City of Stockton authorizing the use of its streets. At page 475, the court said:

> "The granting or withholding of the certificate is an exercise of the power of the *state* to determine whether the rights and interests of the general public will be advanced by the prosecution of the enterprise which it is proposed to carry on for the service of the public. This is an entirely different question from that of the *local control* of the streets, and *power over the two subjects may well be vested at the same time in different governmental bodies, without the one in any way clashing with or interfering with the other.* The Railroad Commission might grant a certificate authorizing a public utility to engage in its business in a given city, but the certificate would not authorize the use of the streets, unless the right to so use them had been given by the authority vested with the power to grant such right."

Another somewhat similar situation involving concurrent action by the *Federal* government and by a *State* government came before this Court in *Cummings v. Chicago,* 188 U. S. 410. In this case, Mr. Justice Harlan said (p. 431):

> "The effect of that act (River and Harbor Act of March 3, 1899), reasonably interpreted, is to make the erection of a structure in a navigable river, within the limits of a state, depend upon the *concurrent or joint assent of both the national government and the state government.* The Secretary of War, acting under the authority conferred by Congress, may assent to the erection by private parties of such a structure. Without such assent the structure cannot be erected by them. But under existing legislation they must, before proceeding under such authority, obtain also the assent of the state acting by its constituted agencies." (Emphasis supplied).

To the same effect, see also

Montgomery v. Portland, 190 U. S. 89, 106;

State of Wisconsin v. State of Illinois, 278 U. S. 367, 412.

At page 55 of their brief, the carriers say that no power has been vested in the Interstate Commerce Commission which will permit it "to delegate any power which it may possess to a State Commission." There is, of course, no such delegation here. Each commission acts within its own jurisdiction and neither has attempted to delegate any of its jurisdiction to the other.

At page 59 of their brief, the carriers state that Congress did not intend to vest the Interstate Commerce Commission "with power to issue certificates for the purpose of giving validity to orders of State Commissions." We agree with this statement and submit that there is nothing to show any such intention on the part of Congress or any such action on the part of the Interstate Commerce Commission. The latter Commission simply acts in proper cases on the evidence submitted to it. What action a state commission may thereafter take is a matter as to which the Interstate Commerce Commission can have no knowledge and which has nothing to do with the exercise of the latter's jurisdiction.

We believe that we have now replied to every point of any significance made by the carriers in this portion of their brief and submit that there is nothing in the Railroad Commission's order which in any way contravenes the Commerce Clause of the Federal Constitution or any provision of the Interstate Commerce Act.

B.

INTERSTATE COMMERCE COMMISSION'S CERTIFICATES ARE VALID.

The carriers next present an argument to the effect that the certificates issued by the Interstate Commerce Commission are void (Joint Brief for Appellants, pp. 61-71),

We shall first invite attention to the findings and certificates which were actually issued. We shall then show that they are valid and that, in any event, the contention as to their invalidity can not be raised collaterally as here attempted.

1. THE CERTIFICATES DESCRIBED.

The Interstate Commerce Commission first made its *findings,* including the finding specified by this Court in the *First Los Angeles Union Station Case,* to the effect that "the expense involved therein will not impair the ability of the defendants to perform their respective duties to the public". Certificates were not at that time issued, but the Commission retained jurisdiction "for the purpose of making such further findings and orders and issuing such certificates as the record warrants" (*Los Angeles Passenger Terminal Cases,* 100 I. C. C. 421, 460-1).

Thereafter, in its second decision, the Interstate Commerce Commission reaffirmed its *findings* and issued its *certificates,* including the certificate specified by this Court in the *First Los Angeles Union Station Case,* to the effect that "public convenience and necessity, present or future" require the extensions and abandonments incidental to the construction of the union passenger station.

Thus the Interstate Commerce Commission complied completely with the requirements as to *findings* and *certificates* theretofore specified by this Court.

The description of the certificates issued by the Commission, as such description is given by the carriers in their brief (p. 62) is inaccurate and inadequate.

Thus, as to *extensions,* the carriers refer only to "extension of main lines of railroad" (p. 62). They omit the words which follow immediately in the same clause and which show that these extensions are only such as are necessary

> "to reach and serve a *union passenger station* and termina' which they may construct in the Plaza district. * * *" (R. 154.)

As to *abandonments,* the carriers (p. 62) leave out most of the Commission's carefully worded certificate referring to such abandonments

> "as may be necessary to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal." (R. 154.)

In order that this Court may have before it a true and accurate statement of the Commission's findings and certificates, we show the *findings* in Appendix 2 and the *certificates* in Appendix 3 to this brief. See also R. 138-141, 145, 154-6, 153-4.

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2. THE CERTIFICATES ARE VALID.

In various forms, the carriers urge that the Interstate Commerce Commission had no jurisdiction to

issue the certificates except upon application of the carriers (Joint Brief for Appellants, 63-71).

A necessary corollary of this proposition is that in union passenger station cases before state commissions, the carriers can always defeat the public authorities by the simple device of failing to make application to the Interstate Commerce Commission for the necessary certificates.

The conclusive answer to this contention is that in the *First Los Angeles Union Station Case,* 264 U. S. 331, this Court, clearly understanding that the City of Los Angeles was before the Interstate Commerce Commission in an *adversary* proceeding, pointed out with much care and detail the authority of the Interstate Commerce Commission to issue the certificates. We believe that this Court would not have taken the pains to make its careful review of the subject if, in fact, the Interstate Commerce Commission has no such power in an adversary proceeding. That the Court fully understood the situation, appears from the last two paragraphs of its decision, reading as follows (264 U. S. 331, 347-8):

> "We were advised by statements at the bar that after the California Supreme Court handed down its decision in this case, the City of Los Angeles filed a petition with the Interstate Commerce Commission asking for an order to provide, maintain and use a union station, that a hearing followed and that, pending the decision in this Court, the matter is held under consideration.

> "For the reasons given, we think the course taken by the City of Los Angeles was the correct one. Until the Interstate Commerce Commission shall have acted under paragraphs 18 to 21 of section 402 of the Transportation Act, the respondent railways can not be required to provide a new interstate union station and to extend their main tracks thereto as ordered by the State Railroad Commission."

In the *Second Los Angeles Union Station Case,* 280 U. S. 52, this Court had before it a record very clearly showing the *adversary* nature of the proceeding which the City of Los Angeles had brought before the Interstate Commerce Commission. After a second review of the situation, this Court held that its first decision decides that

> "until the Interstate Commerce Commission had acted under those paragraphs, the carriers could not be *required* to provide a new union station or to extend their main tracks thereto *as ordered by the State Railroad Commission."* (280 U. S. 52, 61.) (Emphasis supplied.)

We do not believe that this Court would have so expressed itself if the Interstate Commerce Commission did not, in fact, have the authority in the proceedings then pending before it, to issue such certificates.

That the Interstate Commerce Commission considered the certificates to be valid appears not merely from the fact that the Commission issued them but

also from the following note in the Digest entitled "Interstate Commerce Acts Annotated", recently published by the Commission under direction of Congress:

> "The Commission has authorized certificates of convenience and necessity under this paragraph (Sec. 1, Par. 19 of the Act) and Pars. (18), (20) and (21) in complaint proceedings, brought under the provisions of the Act, without application by the carriers and, in fact, against their objections." (Page 1042, Note 12—"Issuance of Certificate without application by carrier itself".)

The California Railroad Commission considered the certificates to be valid and upon the filing of the same (R. 4) denied the petitions of the carriers for rehearing.

The Supreme Court of California held that the certificates are valid and said (*Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of the State of California,* 209 Cal. 460, 79 Cal. Dec. 457, 466, R. 184, 198):

> "The certificates on their face are proper and sufficient and comply with the decision of the Supreme Court of the United States; the Railroad Commission is so considering them, as did the Interstate Commerce Commission."

In the matter of findings and certificates, the Interstate Commerce Commission acted in exact accord with the decision of this Court in the *First Los Angeles Union Station Case,* and we submit that it is clear

beyond reasonable doubt that these findings and certificates, thus made and issued, are valid.

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3. THE VALIDITY OF THE CERTIFICATES CAN NOT BE ATTACKED COLLATERALLY.

These findings and certificates were made and issued by the Interstate Commerce Commission in a proceeding known as Docket No. 14,778, *City of Los Angeles v. Los Angeles and Salt Lake Railroad Company, Pacific Electric Railway Company, Southern Pacific Company, Southern Pacific Railroad Company, The Atchison, Topeka & Santa Fe Railroad Company and Union Pacific Railroad Company.*

The defendant carriers all appeared and filed formal answers. Throughout the entire proceedings from the filing of the complaint in said Docket, in March, 1923, until the Commission's second decision on May 8, 1928, each of the carriers who is an appellant herein was a party to said Docket, with full opportunity to appear and be heard. Each of said carriers, in fact, participated actively throughout the proceedings.

With said Docket No. 14,778, the following applications of certain of said carriers were consolidated for hearing and decision:

(1) Finance Docket No. 3556—being an application of Southern Pacific Company and Southern Pacific Railroad Company for a certificate of public convenience and necessity authorizing the abandonment of lines and the abandonment of

certain main line freight and passenger service in Los Angeles, California; and

(2) Finance Docket No. 3569—being an application of Southern Pacific Company, Southern Pacific Railroad Company, and Los Angeles & Salt Lake Railroad Company for a certificate of public convenience and necessity for the construction of new lines and extension of lines of railroad in Los Angeles, California.

In these applications, said carriers asked the Interstate Commerce Commission to issue certificates of public convenience and necessity to enable them to make *extensions* and *abandonments* in connection with *their* plan for solving the Los Angeles passenger terminal situation, which plan both the Interstate Commerce Commission and the California Railroad Commission found to be not in the public interest.

That the Interstate Commerce Commission had jurisdiction over the carriers in these proceedings can not be doubted. Likewise, not even the carriers would deny that the Commission had jurisdiction over the subject matter of the findings and certificates specified by this Court in the *First Los Angeles Union Station Case.*

Under the circumstances, it would seem to be elemental that the decision of the Interstate Commerce Commission can not be attacked collaterally.

Santiago v. Nogueraz, 214 U. S. 260, 267;
Doty v. Irwin, 168 Ill. 50, 47 N. E. 768;

Cromwell v. Hull, 97 N. Y. 209;
Reed v. Reed, 107 N. Y. 545, 14 N. E. 442;
Allen v. Huntington, 2 Aik. (Vt.) 249, 16 Am. Dec. 702;
Freeman on Judgments (5th ed.), 675-6, 679-80;
12 *R. C. L.* 864-5.

The carriers seek to justify their collateral attack by the following contention (Joint Brief for Appellants, p. 63):

> "Appellants could not by injunction or otherwise correct the Commission's action *because it was not mandatory* (emphasis supplied). *United States v. L. A. & S. L. R. Co.,* 273 U. S. 299."

In other words, the carriers base their claim that they can attack the Interstate Commerce Commission's certificates collaterally, on the proposition that they had no remedy, by injunction or otherwise, to correct the Commission's action.

As a matter of fact, the carriers could have filed in the appropriate District Court of the United States a bill for an order to set aside the Commission's certificates (28 U. S. C. A., secs. 45, 45a, 46, 47). Hence the entire foundation on which they base their claimed right to make a collateral attack falls, and their claim is shown to be without any merit whatsoever.

The test of the right to resort to the appropriate United States District Court is not whether the Interstate Commerce Commission's action was "*mandatory*" but whether it was "*affirmative*" in character.

This Court has declared the rule in a number of recent decisions in cases in which the Interstate Commerce Commission had issued certificates declaring that public convenience and necessity required an abandonment, acquisition of control or similar action.

Thus, in *The Chicago Junction Case,* 264 U. S. 258, the Interstate Commerce Commission had granted authority to the New York Central Railroad to acquire control of certain terminal railroads in Chicago. Certain objecting railroads filed a bill in the United States District Court against the United States, the Interstate Commerce Commission, the New York Central Railroad and the terminal railroads to have the order of authorization set aside and for an injunction. The defendants contended that the Commission's order was not subject to judicial review for the reason that it was merely *permissive* in character. This Court held that the fact that the order was merely *permissive* did not preclude review and referred to orders under the fourth section of the Interstate Commerce Act (long and short haul clause) as to which it has uniformly been held that a suit will lie to set aside the order (pp. 263-4).

Referring to *Procter & Gamble Co. v. United States,* 225 U. S. 282 and similar cases, in which it was held that an order of the Commission which *denied* affirmative relief was not subject to review, Mr. Justice Brandeis said (p. 264):

> "The Court declined to interfere, because to do so would have involved exercise by it of the

administrative function of granting the relief which the Commission, in the exercise of its jurisdiction, had denied. *Here the order complained of is an affirmative one. That is, it grants the relief sought.*" (Emphasis supplied.)

In *Colorado v. United States,* 271 U. S. 153, the Interstate Commerce Commission had issued a *certificate* authorizing the *abandonment* of a branch line of railroad in Colorado. The State of Colorado brought suit in the United States District Court to enjoin and set aside the order. At page 161, Mr. Justice Brandeis said:

> "*The remedy pursued is the appropriate one.* (Emphasis supplied.) See *Texas v. Eastern Texas R. R. Co.,* 258 U. S. 204."

In the very recent case of *Piedmont & Northern Railway Co. v. United States,* 280 U. S. 469, decided on February 24, 1930, the Interstate Commerce Commission had *dismissed,* on the merits, an application of Piedmont & Northern Railway Company for a certificate declaring that public convenience and necessity required the construction of proposed *extensions.* The Railway Company then filed in the United States District Court a suit for an injunction and an order to set aside the Commission's order of dismissal.

This Court pointed out that the Commission's action was entirely *negative* and that, accordingly, the case was not one in which the United States District Courts could issue an injunction. Mr. Justice Brandeis distinguished the case from those in which it has been

held that, on the *granting* of *certificates,* bills for injunction might be filed in the United States District Court and said (p. 478):

> "The case is entirely different from those where *an application for a certificate is alleged to have been erroneously granted,* as in *The Chicago Junction Case,* 264 U. S. 258 and *Colorado v. United States,* 271 U. S. 153. There a judicial review is provided in order to protect a legal right of the plaintiff alleged to have been infringed by an order which authorizes *affirmative* action." (Emphasis supplied.)

The case of *United States v. Los Angeles & Salt Lake Railroad Company,* 273 U. S. 299, the only case relied on by the carriers in this connection, does not help them. This Court there held that a "final value" of the property of a railroad company by the Interstate Commerce Commission is merely the statement of the result of an investigation and is not an "order" which may be reviewed. This Court expressly pointed out that the Commission's order is one "which does not grant or withhold any authority, privilege or license; which does not extend or abridge any power or facility"; and hence is not an *affirmative* act which may be tested by injunction (pp. 309-10). The Court thus reaffirmed the rule established in its prior decisions in cases of certificates of public convenience and necessity and added another case to those establishing the unsoundness of the position taken by the carriers.

Our case is one in which the Commission did grant an "authority, privilege or license". The carriers, accordingly, had the right to test the Commission's decision by a proceeding in the United States District Court. This they chose not to do. They can not now raise collaterally the issue which should have been raised, if at all, in a direct proceeding in the appropriate United States District Court.

This was the view of the Supreme Court of California when, in referring to this same claim of the carriers, it said:

> "We think this question is not properly raised here." (*Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of the State of California,* 209 Cal. 460, 79 Cal. Dec. 457, 466, R. 184, 198.)

While we respectfully insist on the point that the carriers can not raise this issue collaterally, as they are seeking to do, we believe that the Court will not find it necessary to pass on the point for the reason that the findings and certificates issued by the Interstate Commerce Commission are lawful and valid.

C.

CALIFORNIA RAILROAD COMMISSION'S ORDER IS JUST AND REASONABLE AND DOES NOT DEPRIVE ANY CARRIER OF ANY RIGHT UNDER THE FOURTEENTH AMENDMENT TO THE FEDERAL CONSTITUTION.

The carriers devote the remaining portion of their brief (Points III and IV, pp. 72-117) to contentions

that in various respects the California Railroad Commission's order violates rights secured to them by the Fourteenth Amendment to the Federal Constitution.

These contentions are summarized on page 72 of the brief. Although the carriers make numerous *claims* as to matters of fact, we are amazed to find that, with the exception of a few references on pages 110 and 111, the 45 pages of their brief devoted to these claims contain no references whatsoever to the evidence in the Record herein.

The carriers merely make omnibus claims as to questions of fact, unsupported by any reference to the *facts* of the case as shown by the Record before this Court.

If the carriers desire to show that in any matter of fact their rights are being prejudiced, it is their duty to draw this Court's attention to the portions of the Record which they claim will support their claims. The burden of showing the order, on its facts, to be unreasonable and arbitrary is upon the appellant carriers (*New Orleans Public Service, Incorporated, v. City of New Orleans,* 281 U. S. 682, 686).

After the most painstaking and thorough investigations, the Interstate Commerce Commission and the California Railroad Commission have each *twice* found that these claims are without merit.

The Supreme Court of California, after its careful examination of the Record, found:

> "Extensive hearings were had upon this general problem and expensive investigations were

made by engineers and other experts and the findings of the Railroad Commission were made after full consideration and upon ample evidence" (*Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of the State of California,* 209 Cal. 460, 79 Cal. Dec. 457, 465, R. 184, 196).

Continuing, the Supreme Court said (79 Cal. Dec. 457, 466, R. 184, 197):

"There is nothing unreasonable and arbitrary in the findings and order made."

In view of the failure of the appellant carriers to cite evidence in the Record in support of their claims, we believe that we are justified in insisting (what is the fact) that on controverted issues of fact the Record is in each instance against the contentions of the carriers.

Before turning to questions of law, we desire to submit the following comments, which are sustained by the findings and certificates of the Interstate Commerce Commission, the findings and order of the California Railroad Commission, the decision of the California Supreme Court and the Record before this Court, with reference to the general claims of the carriers appearing on page 72 of their brief:

(1) The statement of the carriers that their present terminal stations are adequate is not in accordance with the facts. The Salt Lake no longer has a station of its own. The Santa Fe's station is antiquated, wholly inadequate and lo-

cated in a scene of danger and the Santa Fe's officials have conceded that it must be rebuilt at a cost of $1,182,317. The Southern Pacific's Arcade station is overcrowded now during evening hours when important passenger trains leave, is rapidly becoming inadequate and is so located that all the passenger trains of the Southern Pacific Company must move through a scene of danger on and along Alameda Street in order to reach the depot.

Even if no *union* passenger station were constructed, the carriers would be under the necessity of expending millions of dollars in order to make their passenger facilities in Los Angeles safe and adequate.

(2) The only portions of their main lines of railroad which the carriers would be required to abandon would be a small mileage in connection with track rearrangements in the Los Angeles terminal, necessary and incidental in connection with the construction and operation of the union passenger station. The trackage of the Southern Pacific on Alameda Street would be retained for industrial freight switching at night, although every Southern Pacific official who has testified in this proceeding has agreed that the operation of passenger and main line freight trains on and along Alameda Street must be discontinued.

(3) Although it will be necessary for the carriers to acquire some additional lands and right of way, they already own 70 per cent of the 37

acres required for the Plaza site and the remaining lands are merely such parcels as are necessary to "round out" the site.

(4) The claim of the carriers that they will be required "to extend their main lines of railroad to reach territory which they have not heretofore undertaken to serve" is directly contrary to the facts. As will appear from the map which is Exh. 5 of the Railroad Commission of California (R. opposite p. 226), and as will hereinafter be explained in more detail, the present passenger stations of the carriers are located within the same section or portion of the City of Los Angeles as the site of the proposed union passenger terminal. The new union passenger station is to be built in the identical railroad and industrial district of the City of Los Angeles which the carriers have for years been serving by means of their tracks, trains and depots. There will be no extension into new territory.

(5) The carriers are in error in saying that the Railroad Commission's order requires the "joint use by one or more of the railroads of facilities owned by the others." A reading of the Railroad Commission's order will show that it contains no requirement whatever for the joint use of any existing railroad facilities (R. 119, 133).

(6) The only franchises or permits which it will be necessary for the carriers to secure will

be such as may be necessary to cross a few streets in the vicinity of the site of the proposed union station, so as to bring about the necessary track arrangements and the City of Los Angeles, by formal resolution of its City Council, now in full force and effect, stands ready to grant all such franchises and permits and to enact such ordinances for the opening or closing of all such public street areas as may be necessary to make the Railroad Commission's order fully effective. These franchises or permits are merely a small detail incidental to the improvement.

(7) While the improvements ordered by the Railroad Commission will, of course, cost money, *the total investment in passenger facilities under the Railroad Commission's decision will be less than it would have been under the carriers' own plan,* which both the Federal and the State Commission found to be not in the public interest. The carriers must expend several millions of dollars, in any event, to make their passenger facilities safe and adequate. They are being directed to expend substantially the same amount of money so as to eliminate duplication and secure the greater economy resulting from a single, unified passenger terminal.

Wherever it may seem appropriate, we shall hereinafter make specific references to the Record in connection with the above claims of the carriers. We be-

lieve the above statement sufficient for present purposes.

We shall now address ourselves to the fundamental principles of constitutional law relating to orders of public authority requiring the construction of union passenger stations and shall then reply directly to each proposition of law advanced by the carriers in Parts III and IV of their brief.

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1. UNDER THE POLICE POWER, PUBLIC AUTHORITY MAY REQUIRE THE CONSTRUCTION AND OPERATION OF UNION PASSENGER STATIONS WHENEVER THE POWER HAS BEEN CONFERRED AND, ON THE FACTS, SUCH ORDER WOULD BE REASONABLE.

a) Union passenger station decisions of state courts.

We shall now refer to quite a number of *union passenger station* cases which establish the above proposition, without a single decision to the contrary.

The carriers seek, on pages 82-89 of their brief, to distinguish or explain away these decisions but we are not convinced that their efforts have in any case been successful.

In *Railroad Commission of Alabama v. Northern Alabama Railway Co.*, 182 Ala. 357, 62 So. 749, the Railroad Commission of Alabama ordered three railroad companies to construct a union passenger station upon a site selected by the Commission. The railroad companies were ordered to acquire said site by

purchase or condemnation. Complainant alleged that it had its own depot and had already arranged to construct a new and larger depot upon its own site. It averred that the Commission's order was unreasonable and arbitrary and deprived complainant of its property without due process of law in violation of the Constitutions of Alabama and the United States. The Court held that the Railroad Commission's order, made in the exercise of the state's police power, did not violate any provision of the State or Federal Constitutions, "notwithstanding the railroad may lose the use of the old building or the use of the lot as a location for its passenger depot." On this point, the Court said (p. 752):

> "It acquired the lot and erected the building with a full knowledge of and subject to the police power of the state."

The decision shows that the Commission directed the railroads to acquire a *new site* not then owned by any of the carriers and directed that, if it should become necessary, one of the three railroads, named in the order, should acquire the land either by purchase or by condemnation.

In *Railroad Commission of Alabama v. Alabama Great Southern R. Co.*, 185 Ala. 354, 64 So. 13, the Railroad Commission of Alabama ordered 5 railroads to secure sufficient grounds within a specified territory in the City of Bessemer and to erect a union passenger depot thereon. The railroads having failed

to submit plans for the site of the passenger depot or to agree on the apportionment of the expense, the Commission issued a supplemental order fixing the location of the depot and apportioning the cost thereof and directing the railroads to acquire the site by purchase or condemnation. The Railroad Commission's orders were held valid.

On page 16 of the Reporter, the court said:

> "Unless the contrary is clearly shown, we will presume not only that the place prescribed is suitable, but that sufficient ground can be obtained, either by private purchase or by condemnation proceedings, at reasonable figures, for such station. Through the power of eminent domain which the law has conferred upon the railroad companies, they possess all the power which is necessary to acquire the needed lands at their fair value, and under the present state of the record, we must presume that the Railroad Commission has placed no unreasonable burden upon the railroad companies in so far as the acquisition of the needed ground for the station is concerned."

At page 18 of the Reporter, the court continued:

> "It would, however, create a strange anomaly for the courts to hold that a state has the authority to require all railroad companies operating railroads within a city, whenever the reasonable needs of the traveling public are such as to demand a union passenger station at that point, to use a union passenger station in said city, and at the same time deny to the state the power to re-

quire such companies to jointly acquire by purchase or by condemnation proceedings, sufficient land upon which to maintain the building and to jointly construct the necessary building. The two positions are inconsistent and cannot co-exist. If the state has the power to which we have referred, and that power seems to be conceded, then it has the corresponding authority to put that power into exercise."

The carriers seek to minimize the effect of the decision (Joint Brief for Appellants, p. 83) by saying that "the power of the state to compel all railroads entering a given city to use a union station was conceded." However, the decision shows that the court made the following decisions in overruling contentions of the carriers to the contra:

(1) That public authority may require several railroad companies to acquire, either by purchase or by condemnation proceedings, new land for a union passenger station (64 So. 13, 15-16);

(2) That an order for the construction and operation of a union passenger station is not void because it directs the railroads to abandon their presently occupied and used separate depots and depot facilities (64 So. 13, 16); and

(3) That the several railroads may be jointly directed to purchase or condemn the new land for the union passenger station (64 So. 13, 18).

On the general question of the constitutional power of the legislature to authorize a state railroad commis-

sion to require the construction of a union passenger station and to select the site thereof, the court concluded (64 So. 13, 18):

> "It seems to us, therefore, that the Legislature had the constitutional power to vest in the Railroad Commission the authority which it conferred upon it in the above-quoted section 5545 of Code of 1907 * * * and that no part of said section is violative of any clause of the state or federal Constitution."

In *Mayor and Aldermen of Worcester, et al., v. Norwich and Worcester Railroad Company, et al.*, 109 Mass. 103, a statute of Massachusetts provided that 5 railroad companies should unite in a union passenger station in Worcester; that commissioners should select the site as between two sites named in the statute; that one of the railroads should erect the station with power to condemn, the other railroads paying rent; that after the completion of the station two specified railroads "shall respectively discontinue the present locations of their railroads in portions of the city of Worcester"; that all the railroad companies may and shall unite in the location and construction of one or more railroad tracks for their joint use; and that the railroads might each purchase or take such lands as might be necessary for their purposes.

The objecting railroads urged, among other matters, that to extend their railroads to the union station "would require the taking of much land from private persons for the location of the extensions, through

densely settled portions of a populous city"; that the construction of the tracks would involve great expenditures; that one track extension would have a length of over one mile; that some of the railroads would be required to discontinue without compensation valuable portions of their present locations; and that public convenience and necessity would not be served by the changes ordered by the statute.

The Supreme Judicial Court of Massachusetts held that the statute was a reasonable exercise of the right to alter, amend or repeal corporate charters, reserved to the Legislature, and at page 113 said:

> "It is no valid objection to such alterations that they require corporations to extend their tracks, and to exercise the right of eminent domain for this purpose, and to incur additional expense. The power to extend their tracks is often granted at their own request, and is granted with no less propriety when the interests of the public require it."

The carriers seek to avoid the effect of this decision by a reference to *Superior Water, etc., Co. v. Superior,* 263 U. S. 125 and *Chicago, etc., R. R. Co. v. Wisconsin,* 238 U. S. 491, 501. The former decision does not have the effect ascribed to it by the carriers and it is not in point for them. The decision merely holds that a state legislature can not substitute an indeterminate permit provision for an existing *contract* between a city and a waterworks company. The police power was in no way involved. The latter decision

merely holds that the reserved power to alter or amend the charter of a corporation does not confer *arbitrary* power, or authorize the taking of the corporation's property *without compensation.* No one disputes this proposition but it is inapplicable here.

In *Dewey v. Atlantic Coast Line, et al.,* 142 N. C. 392, 55 S. E. 292, a number of citizens of Goldsboro, N. C., brought an action against 3 railroad companies to prevent obedience by them to an order of the Corporation Commission of North Carolina requiring the railroad companies to construct a union passenger depot on a specified site somewhat removed from the site of the existing depots. In upholding the statute under which the Corporation Commission acted and also the Commission's order, the court, at page 294 of the Reporter, said that the power of the Legislature to enact such statutes has been established by numerous well-considered cases. The court also drew attention to the fact that the railroads might use the power of eminent domain to acquire such new properties as might be necessary to enable them to carry out the Commission's order (p. 295).

The carriers (Joint Brief for Appellants, pp. 83-4) seek to overcome the effect of this decision by drawing attention to the fact that the action arose at the suit of third parties, namely, property owners, to enjoin the railroad companies from carrying out the Commission's order. However, the petitioning third parties raised the whole question of the authority of the Legislature to enact a statute conferring such union

passenger station powers on the Corporation Commission, and we submit that a decision on that issue is just as effective and significant in an action by these parties as it would have been in an action by the railroad companies or the Corporation Commission. The court held:

> (1) That the power of the Legislature to enact such statute has been established by numerous well-considered cases (55 S. E. 292, 294); and
>
> (2) That the power of the State to act is not limited to a case in which the railroads already own the site and the right of way leading thereto. If additional property is necessary, it can be acquired by the railroads under the power of eminent domain (55 S. E. 292, 295).

In *Missouri, O. & G. Railway Co. v. State,* 29 Okla. 640, 119 Pac. 117, it appeared that the Corporation Commission of Oklahoma had made an order directing Missouri, O. & G. Railway Company and two other railroad companies to erect and maintain a union passenger depot in Durant, Oklahoma, at a designated site. Appellant urged that the Commission's order would compel it to abandon a right of way and station grounds theretofore acquired by it; that it would lose a bonus of $10,000 which citizens of Durant had subscribed for the erection of a passenger station on said station grounds; that the Commission's order would require appellant to acquire a new right of way through private property; that it would necessitate an expenditure by appellant of not less than

$50,000; and that the order violated appellant's rights under the Constitution of the United States. In ruling against these contentions, the court at page 121 of the Reporter, held that the Commission's order might be sustained either under the reserved power to amend, alter or repeal the charters of corporations "or on the ground, as stated by Judge Brewer in *State v. Kansas City, etc., Ry. Co.*, 32 Fed. 722, that the same is a valid exercise of the police power of the state."

The carriers (Joint Brief for Appellants, p. 87) seek to distinguish the case on the ground that "that case was decided upon the authority of the Massachusetts case of *Mayor v. Norwich, etc.*, supra, which, as we have shown, is contrary to the decisions of the Supreme Court of California and of this Court." To this contention we make two responses as follows:

(1) The carriers have not shown that the Massachusetts decision is contrary to the decisions either of the Supreme Court of California or of this Court. In fact, this Court expressly cited the Massachusetts case with approval in *Wisconsin, Minnesota & Pacific Railroad v. Jacobson*, 179 U. S. 287, 302.

(2) The decision in the Oklahoma case was rested not only upon the Massachusetts case but also, in express words

> "on the ground, as stated by Judge Brewer in *State v. Kansas City, etc., Ry. Co.*, 32 Fed. 722, that the same is a *valid exercise of the*

police power of the state." (Emphasis supplied).

Whatever other sources of authority may exist, it is, of course, settled law that in all cases the valid exercise by public authority of the power to require the construction and operation of union passenger stations springs fundamentally from the *police power.*

In *State v. St. Louis Southwestern Railway Co., et al.,* (Tex. Civ. App.), 165 S. W. 491, the State of Texas asked that a writ of mandamus issue to enforce an order of the Railroad Commission of Texas directing the 3 defendant railroad companies to erect and maintain a union depot at Hillsboro, Texas. Judgment for the defendants was reversed and the case remanded for a new trial on issues of fact. At page 498 of the Reporter, the court said:

> "We have no doubt as to the constitutionality of the law requiring railroads to build union depots at such places and of such character as the Railroad Commission shall find necessary for the accommodation of the public, when it shall also have found the other facts required by the statute, but, if any doubt existed on the subject, it would be our duty to resolve it in favor of the statute."

Replying to the argument that the statute did not authorize the Railroad Commission to select the *site* of the proposed union depot, the court said (p. 498):

> "The statute explicitly grants the Commission the power to require railroads to build union de-

> pots, and that carries with it, by necessary implication, every power necessary to the accomplishment of such object. Courts ought not to resort to technicalities to override the clear import of a statute."

Answering the argument that the order of the Railroad Commission was void because it directed the construction of a union depot on a site owned by one of the railroads which refused to let in the others, the court said (p. 498):

> "But this is immaterial, as said appellees have the right to acquire, by condemnation proceedings, such interest in said land as is necessary for their depot purposes under the order of the Commission."

The carriers (Joint Brief for Appellants, p. 84) merely refer to this decision by saying that

> "the question of the power of the state to compel a railroad to extend its lines in order to enter a union station does not appear to have been raised."

This contention of the carriers is obviously in error, as appears from the above-quoted language from the decision.

The principal contentions of the carriers in support of their claims under the Federal Constitution may be thus summarized:

1. The carriers can not lawfully be required to abandon any of their existing passenger facilities;

2. The carriers can not lawfully be required to acquire additional land by the exercise of the power of eminent domain;

3. The carriers can not lawfully be compelled to grant the use of any portion of their property to a rival railroad, even though compensation be first paid; and

4. No public authority can lawfully compel carriers to go to a new site within the same city and there erect a union passenger depot.

Each of these points has been decided, on numerous occasions, against the contentions of the carriers.

Without wearying the Court by further quotations from union depot cases, we shall merely cite the union depot decisions on each of these four points:

(1) *Abandonment of existing passenger stations and other facilities.*

The following decisions hold that an order for the construction of a union passenger depot, otherwise valid, does not lose its validity because it contemplates the abandonment by one or more railroads of their existing passenger stations and other passenger facilities. Practically every order for the construction of a union passenger depot involves the abandonment of one or more existing passenger depots adequate for that railroad alone.

Railroad Commission of Alabama v. Northern Alabama Ry. Co., 182 Ala. 357, 62 So. 749;

Railroad Commission of Alabama v. Alabama Great Southern Ry. Co., 185 Ala. 354, 362, 64 So. 13, 16;

State v. Jacksonville Terminal Co., 71 Fla. 295, 331, 71 So. 474, 484;

Mayor & Aldermen of Worcester v. Norwich and Worcester R. R. Co., 109 Mass. 103;

Missouri, O. & G. Ry. Co. v. State, 29 Okl. 640, 119 Pac. 117;

Chicago, R. I. & Pac. Ry. Co. v. State, 90 Okl. 173, 217 Pac. 147;

State v. St. Louis Southwestern Ry. Co. (Tex. Civ. App.), 165 S. W. 491, 199 S. W. 829, 830.

(2) *Acquisition of additional land by eminent domain proceedings.*

The following decisions hold that the fact that compliance with an order for the construction of a union passenger depot will require a railroad to acquire additional property by the exercise of the power of *eminent domain* does not militate against the validity of the order.

Railroad Commission of Alabama v. Northern Alabama Ry. Co., 182 Ala. 357, 62 So. 749;

Railroad Commission of Alabama v. Alabama Great Southern Ry. Co., 185 Ala. 354, 361, 64 So. 13, 15, 16;

Mayor and Aldermen of Worcester v. Norwich and Worcester Railroad Co., 109 Mass. 103;

Dewey v. Atlantic Coast Line, 142 N. C. 392, 55 S. E. 292;

State v. St. Louis Southwestern Ry. Co. (Tex. Civ. App.), 165 S. W. 491, 498, 199 S. W. 829, 830.

(3) *Use of property of rival railroad.*

The fact that compliance with an order for the construction of a union passenger depot will require a railroad to acquire the right to use the property of a rival railroad will not make such order invalid. The public authorities may, under their police power, make such orders.

Mayor & Aldermen of Worcester v. Norwich & Worcester R. R. Co., 109 Mass. 103;

Missouri, O. & G. Ry. Co. v. State, 29 Okl. 640, 119 Pac. 117;

Chicago, R. I. & P. Ry. Co. v. State, 90 Okl. 173, 217 Pac. 147;

State v. St. Louis S. W. Ry. Co. (Tex. Civ. App.), 165 S. W. 491, 498, 199 S. W. 829, 830.

(4) *Selection of new site.*

The fact that the public authority selects for the union passenger depot a *new site* on lands of third parties does not make the order invalid. Public authority has just as much power to select as a site the lands of third parties as lands already in railroad ownership.

Railroad Commission of Alabama v. Northern Alabama Railway Co., 182 Ala. 357, 62 So. 749;

Railroad Commission of Alabama v. Alabama Great Southern R. Co., 185 Ala. 354, 64 So. 13;

Dewey v. Atlantic Coast Line R. Co., 142 N. C. 392, 55 S. E. 292.

(5) *Additional authorities.*

In the following additional cases, the right of the public authorities to order the construction and operation of union passenger stations, where the facts showed such order to be reasonable, was upheld.

State ex rel. Barton County v. Kansas City, Ft. S. & G. R. Co., 32 Fed. 722;

State ex rel. Railroad Commissioners v. Atlantic Coast Line R. Co., 67 Fla. 441, 63 So. 729;

Griffin v. Southern Ry. Co., 150 N. C. 312, 64 S. E. 16;

Corporation Commission v. Seaboard Air Line Ry. Co., 161 N. C. 270, 76 S. E. 555;

North Carolina Corporation Commission v. Southern Ry. Co., 185 N. C. 435, 117 S. E. 563;

Missouri, K. & T. Ry. Co. v. State, 38 Okl. 401, 133 Pac. 35;

Chicago, R. I. & P. Ry. Co. v. State, 90 Okl. 173, 217 Pac. 147.

In *Los Angeles Passenger Terminal Cases*, 100 I. C. C. 421, 425, the Interstate Commerce Commission, speaking of the effect properly to be given to the union passenger depot decisions of the state courts on which we rely, said:

"All parties concede that if we have the power to require the construction of a union station, it has come in the Transportation Act, 1920. Prior to that enactment such power was clearly in the

States. In numerous instances States had by constitution or statute delegated power to their railroad commissions to require the construction and operation of union stations. In such cases, where the facts reasonably come within the legislative enabling act, the State courts have upheld orders of the State commissions. The State courts have held the order could not be defeated (1) by showing that compliance would require a railroad to acquire additional property by the exercise of the power of eminent domain, (2) or because it contemplated the abandonment by some railroads of their existing passenger stations and other passenger facilities, (3) or because compliance would require a railroad to acquire the right to use the property of a rival railroad."

(NOTE: There follows, in a footnote, the citation of the decisions of the state courts on which we rely on the question of deprivation of rights guaranteed by the Federal Constitution. 100 I. C. C. 421, 426.)

The Supreme Court of California, in the decision now at issue herein, reached the same conclusion (*Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of the State of California,* 209 Cal. 460, 79 Cal. Dec. 457, 464, R. 184, 195):

"It is also contended that the order, requiring as it does, the acquisition and dedication to public use of new property necessary for the construction of a union station and the abandonment of adequate facilities, deprives the petitioners of their property without due process of law and takes their property for public use without compensation, contrary to the constitutional guaran-

tees of the United States and of the State of California. That contention is not a new one, but has been passed upon by numerous state tribunals, contrary to the contention of the railroads herein, noticeably in the cases of *State ex rel. Railroad Commissioners v. Atlantic Coast Line R. Co., et al.*, 67 Fla. 441; *Griffin v. Southern Ry. Co.*, 150 N. C. 312; *State ex rel. Corporation Commission v. Seaboard Air Line, et al.*, 161 N. C. 270; *State ex rel. Corporation Comm. v. Southern Ry. Co., et al.*, 185 N. C. 435; *Gulf, S. F. Ry. Co. v. State*, 167 S. W. 192; *Railroad Commission v. Northern Alabama Ry. Co.*, 182 Ala. 357; *Railroad Commission v. Alabama Great Southern R. R. Co.*, 185 Ala. 354; *Mayor, etc. v. N. & W. R. R. Co.*, 109 Mass. 103; *State v. St. L. S. Ry. Co.*, 165 S. W. 491; *W. M. & P. Co. v. Jacobson*, 179 U. S. 287.

"The foregoing decisions also answer the contention of petitioners that the erection of a union station is a matter of business policy and management and not a proper subject for control under the police power of the state."

b. Decisions of Supreme Court of United States.

With a few exceptions, the foregoing cases have all been union passenger station decisions of state courts.

We desire now to refer to a number of important decisions of this Court.

In *Wisconsin, Minnesota and Pacific Railroad v. Jacobson*, 179 U. S. 287, the Railroad and Warehouse

Commission of Minnesota had made an order directing two railroad companies to make track connections. The carriers objected on the ground, among others, that in order to construct a connecting track it would be necessary for the company "to go outside of its right of way and to condemn land for that purpose" (p. 291). This Court affirmed the order. The carriers here say (Joint Brief for Appellants, p. 86), that the case is not in point. We rely on the case to meet the contention of the carriers that they can not be compelled to acquire *new land,* not now owned by them, for the purpose of erecting a union passenger station thereon. In holding a similar contention to be unsound, this Court in the *Jacobson* case, held that the order of the Minnesota Commission was valid "although to carry out the judgment may require the exercise by the plaintiff in error of the power of eminent domain" (179 U. S. 287, 302).

In the very recent case of *New Orleans Public Service, Incorporated v. City of New Orleans,* 281 U. S. 682, decided on June 2, 1930, this Court held that a city ordinance requiring a street railway company to tear down and *abandon* a viaduct and to construct and operate its tracks at grade across 8 tracks of the Southern Railway Company did not violate any right of the carrier under the Fourteenth Amendment (p. 686). The Court held that the ordinance came properly within the scope of the police power (p. 686).

At page 687, this Court said:

> "It is elementary that enforcement of uncompensated obedience to a regulation passed in the legitimate exertion of the police power is not a taking of property without due process of law. *Chicago, B. & Q. Railroad v. Chicago,* 166 U. S. 226, 251; *C., B. & Q. Ry. v. Drainage Commissioners,* 200 U. S. 561, 594; *Chicago & Alton R. R. v. Tranbarger,* 238 U. S. 67, 77."

Continuing, the Court said (p. 687):

> "The sacrifice of the old structure and the cost of the new crossings involve a large amount of money. But the evidence fails to show that, having regard to the circumstances, it is so large that the regulation must be held to pass the limits of reasonable judgment and amount to an infringement of the right of ownership."

Finally, in the *First Los Angeles Union Station Case* (264 U. S. 331), the carriers made in full detail precisely the same arguments with reference to the violation of the Fourteenth Amendment which they now again urge. If, by reason of any provision of the Federal Constitution, no public authority has any power to order the construction of a union passenger station in Los Angeles, we believe that this Court would have said so, whereupon the case would have been ended. However, this Court acted upon the assumption that the appropriate public authority *does* have the power, under the circumstances here shown, to order the construction of a union passenger station

and, accordingly, proceeded to point out, with great care and in considerable detail, the findings to be made and the certificate to be issued by the Interstate Commerce Commission before such order could be made.

We believe that we are justified, under the circumstances, in adding the decision of this Court in the *First Los Angeles Union Station Case* to the long line of union passenger station cases holding that where the power has been conferred and, on the facts, the order would be reasonable, a state may require the construction and operation of a union passenger station without violating any right of the carriers under the Fourteenth Amendment to the Federal Constitution.

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2. THE AUTHORITIES ON WHICH THE CARRIERS RELY ARE NOT IN POINT.

At pages 73-82 and 90-93 of their brief, the carriers cite a number of decisions in support of their contention that the California Railroad Commission's order deprives them of rights under the Fourteenth Amendment to the Federal Constitution.

On analysis, it will be found that these decisions either establish general principles which no one denies or are cases in which a public authority undertook to require a public utility to extend its service into a *new territory* which it had never held itself out as willing to serve. These latter cases are, of course, inapplicable to the facts of the present case.

Referring first to general principles, no one, as far as we know, denies that a carrier can not have imposed upon it "burdens that are not incident to its engagement" (*Northern Pacific v. North Dakota,* 236 U. S. 585, 595); or that "a state may not require property devoted to one public use to be applied to a different public use" (*Broad River Power Co. v. South Carolina,* 282 U. S. 187, 189); or that carriers can not reasonably be required "to make connections at every point where their tracks come close together * * * regardless of the amount of business to be done, or the number of persons who may utilize the connection if built" (*Oregon, R. & N. Co. v. Fairchild,* 224 U. S. 510, 528); or that a carrier can not be required "to deliver cars and freight received from one state to another at a particular place and in a particular manner" (*McNeill v. Southern Railway Company,* 202 U. S. 543); or that property "shall not be taken for such (public) use without compensation" (*Pennsylvania Coal Co. v. Mahon,* 260 U. S. 393, 415).

Turning now to requirements that extensions be made into *new territory* which the public utility or carrier has never held itself out as ready or willing to serve, a very brief consideration of the *facts* of the present case will show that these decisions are not at all applicable here.

The map of the Railroad and Industrial District of Los Angeles which is Exh. 5 of the California Railroad Commission and which appears opposite page 226 of the Record, and the Plan for Union Passenger

Terminal at the Plaza which is California Railroad Commission's Exh. 4B and which appears opposite page 266 of the Record, show the site of the proposed union passenger station in relation to the existing tracks and passenger depots of the carriers.

As appears from the map first referred to, the Southern Pacific's main line from the north, the Santa Fe's main line from the north and the Salt Lake's branch line to Pasadena all run under a single bridge or viaduct over the Los Angeles River, known as the North Broadway Viaduct, at the entrance to the city from the north. The two former lines are located under said viaduct along the west bank of the river and the latter line along the east bank. The point at which said tracks of said carriers run under the North Broadway Viaduct is located only approximately three-fourths of a mile distant northerly from the site of the proposed union passenger terminal.

As also appears from said map and plan, the Santa Fe's main line tracks run directly across the site of the proposed union passenger terminal near the west bank of the river, the Southern Pacific's main line tracks run across the site along Alameda Street and the Salt Lake's branch line track lies along the east bank of the river, directly across the river from the site.

Said map also shows that the present passenger stations of all three railroads are located within the same section or portion of the industrial district of the city as the site of the proposed union passenger terminal,

the Southern Pacific passenger depot being within approximately one mile of the proposed site, the Santa Fe's depot within less than a mile and the Salt Lake's former depot (now burned) within only about half a mile.

What the California Railroad Commission's order requires is merely a regulation in the public interest, under the police power, of the passenger service which these carriers have for many years been performing by means of their tracks, trains and depots in this identical railroad and industrial district of the City of Los Angeles.

The inapplicability of the decisions cited by the carriers will now be readily apparent.

In *Atchison, Topeka & Santa Fe Ry. Co. v. Railroad Commission of California,* 173 Cal. 577, the Supreme Court of California annulled an order of the Railroad Commission of California directing the Santa Fe to construct and operate a line of railroad between Oceanside in San Diego county and Temecula in Riverside county, California. The order could have been complied with either by constructing twelve miles of new railroad between Fallbrook and Temecula or by an alternative line of thirty-three miles of new construction between San Luis Rey and Temecula. The Court held that the California Commission's order, contemplating the construction of a *new line of railroad* a number of miles in length *into territory not theretofore served by the railroad,* would require the dedication of the rail-

road's property to a new service (p. 582), and hence annulled the order. While conceding that *a railroad company "may be compelled to furnish proper stations for the reception and discharge of passengers and freight"* (p. 585), the court held that what was required by the California Commission's order was that the Santa Fe "build a new line of road to tap or supply a territory which has not theretofore had the benefit of direct railroad service" (p. 586). These facts, are, of course, entirely different from the present situation in which it appears that for many years the carriers have held themselves out as serving the City of Los Angeles with adequate passenger service and where what is directed is merely a relocation within the same general section of the same city of passenger depot facilities, for the purpose of rendering more adequately and satisfactorily the very service which the carriers have for many years undertaken to give to the public.

In *Pacific Telephone and Telegraph Co. v. Eshleman,* 166 Cal. 640, the Supreme Court of California annulled an order of the Railroad Commission of California directing the Pacific Telephone and Telegraph Company to construct a physical connection between its lines and those of two independent telephone companies and to transmit telephone messages thereover. The court held that the Pacific Company had never dedicated its property to such use by rival telephone companies and that for this reason the California Commission's order went beyond the police power and

constituted a taking of property. No such questions arise here. The carriers have dedicated their property to an adequate passenger service in the City of Los Angeles and hence are subject to regulation of that service in the public interest under the police power. If any existing railroad property will be jointly used, compensation will, of course, first be paid.

As the facts show that the rendition of adequate passenger service and the construction of convenient passenger facilities within Los Angeles are clearly "within the use to which the property (of the carriers) has been dedicated" (166 Cal. 640, 677), the present proceedings come clearly within the rule established in the Telephone Case, which hence becomes authority for the Railroad Commission and not for the carriers.

In *Hollywood Chamber of Commerce v. Railroad Commission of California,* 192 Cal. 307, another case cited by the carriers, the petitioner sought by writ of mandate to compel the Railroad Commission of California to hear and determine a complaint in which the California Commission was asked to direct the Los Angeles Railway Corporation to construct *ten and one-half miles* of double track into Hollywood—*a territory which the railway corporation had never undertaken to serve.* Under well established principles, the Court, of course, denied the writ. The case is on all fours with the case of *Atchison, Topeka & Santa Fe Ry. Co. v. Railroad Commission of California,* 173 Cal. 577, and, like it, has no application to the facts of the present proceedings.

The carriers also rely on a separate, concurring opinion of Chief Justice Shaw in *Atchison, Topeka & Santa Fe Railway Co. v. Railroad Commission of California,* 190 Cal. 214, 228, but this was an individual opinion which was not concurred in by any other member of the court, which has never been the law, and which was properly disregarded by the Supreme Court of California in the decision now before this Court.

In the proceeding before the California Supreme Court from which the present appeal has been taken, the carriers relied upon the foregoing California decisions, but the court found that they were inapplicable.

At pages 76 and 77 of their brief, the carriers cite two Federal decisions in cases of orders requiring extensions into *new territory,* but these decisions do not fit the facts of the present case. In *Southern Bell Telephone & Telegraph Co. v. Town of Calhoun,* 287 Fed. 381, the General Assembly of South Carolina had enacted a joint resolution requiring a telephone company to establish and maintain a telephone exchange for the convenience of "other communities" which "were not served" by the company. In the recent case of *Oregon-Washington Railroad & Navigation Company v. United States,* decided by the District Court of the United States for the District of Oregon on January 29, 1931, the court held that the provisions of the Interstate Commerce Act may not be so construed as to authorize the Commission to require carriers to construct a line of railroad a distance

of 185 miles from east to west more than half-way across the State of Oregon through territory which the carriers have never held themselves out as willing to serve.

We need not pause to point out the utter inapplicability of such cases to the facts of the present case.

At pages 81 and 82, the carriers list a number of decisions of state courts. With the exception of the last two decisions, those cases do no more than to reiterate the well established rule that natural gas, electric power, telephone and street railway companies may not be required by public authority to extend their systems to serve cities and towns and communities which they have never held themselves out as willing to serve. These cases add nothing to the present appeals.

The last two cases, *People ex rel. Delaware & Hudson Co. v. Stevens,* 197 N. Y. 1, 90 N. E. 60 and *People ex rel. Binghampton Light, Heat & Power Co. v. Stevens,* 203 N. Y. 7, 96 N. E. 114, are not even cases of extensions of public utility systems. They are cases of security issues in which it was held that under the Public Service Commission Law of New York, as it was then worded, the Public Service Commission of the Second District was not empowered to disapprove a proposed issue of railroad securities, if the securities were to be issued for one of the purposes authorized by the statute.

We invite attention to the fact that the carriers have been unable to find a single *union passenger sta-*

tion case in support of their position. Their cases are all either cases of general principles which no one disputes or of situations so far removed on their facts from the present case as not to be helpful here. None of these decisions in any way detract from the effect of the long line of *union passenger station cases* which are directly in point here and which, without a single dissent, support the order of the California Railroad Commission and the decision of the Supreme Court of California here on appeal, on the issue of the Fourteenth Amendment to the Federal Constitution.

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3. THE CARRIERS ARE IN ERROR IN URGING THAT THE RAILROAD COMMISSION'S ORDER REQUIRES THE JOINT USE OF ANY OF THEIR PROPERTY WITHOUT COMPENSATION FIRST PAID.

At pages 94 to 103 of their brief, the carriers state that the Railroad Commission's order requires the *joint use* by one or more carriers of existing tracks and other properties of other carriers. They then claim that the order is unlawful because it does not specify the compensation to be paid to a carrier whose property is to be thus jointly used.

As is so frequently the case throughout their brief, the carriers make general statements or claims without referring to the Record to ascertain what the *facts* really are.

As a matter of fact, the Railroad Commission's order does not direct or require any joint use of any

existing carrier property. Hence this contention of the carriers is seen to be without any merit whatever.

The directory or mandatory portions of the Railroad Commission's order appear on pages 133 and 134 of the Record. The order requires the carriers to construct and thereafter operate a union passenger station within a designated area

> "together with such tracks, connections and all other terminal facilities and additions, extensions, improvements and changes in the existing railroad facilities of said Companies as may be reasonably necessary and incidental to the use of said union passenger station, at a cost of approximately ten million dollars ($10,000,000), in substantial compliance with the plan outlined in Commission's Exhibit 4-b herein."

The order contains no requirement whatever for the joint use of any existing property.

It is true that among the *findings* of the Railroad Commission is one (6) on the subject of such joint use of existing carrier properties "as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station * * *" (R. 132) but whether any existing tracks or property of any carrier will be jointly used in connection with this project is as yet highly problematic.

There is always the alternative of separate approach tracks leading to the site of the union station grounds, which will obviate the necessity of any joint use.

The situation was understood and tersely stated by this Court in the *First Los Angeles Union Station*

Case, 264 U. S. 331, 340, as appears from the following statement:

> "The changes to be effected under the order will require, in the abandonment of the Southern Pacific main track on Alameda Street for three miles, a *joint use* by the Southern Pacific of main tracks on the river bank with either the Salt Lake or the Santa Fe, *or the construction of its own main tracks on one side or the other along the river bank.*" (Emphasis supplied.)

Which alternative will be adopted does not as yet appear, for the reason that the carriers have not as yet prepared their plans.

If these plans hereafter provide for the construction by each carrier of its own main tracks, the question will not arise.

If the plans provide for the joint use of any existing tracks or other property and the carriers agree on such use and the compensation to be paid, the question will not arise.

Unless the Railroad Commission hereafter directs a joint use, the question will not arise. Whether the Railroad Commission will hereafter make such order, is at this time entirely uncertain.

This particular bridge can be crossed when, if ever, it is reached and it will be assumed that if the bridge is ever reached it will be crossed by the Railroad Commission with due regard to the constitutional rights of the carriers.

In the meantime, we respectfully request the Court to bear in mind that *the Railroad Commission's order has not ordered or required any joint use of any existing property of any carrier.*

In view of the mistake of *fact* made by the carriers in assuming, contrary to the fact, that the Railroad Commission's order directs or requires the joint use of any existing carrier property, we believe it unnecessary to comment on the cases cited by them further than to say that they are not applicable to the facts as shown by the Record herein.

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4. THERE IS NO FOUNDATION FOR THE CONTENTION OF THE CARRIERS THAT THE RAILROAD COMMISSION ACTED UNDER THE GUISE OF EXERCISING POWER OVER RAILROAD GRADE CROSSINGS.

At pages 103 to 112 of their brief, the carriers make some observations, based principally on earlier decisions of the California Railroad Commission, to the effect that the Railroad Commission acted in pursuance of its authority to eliminate unsafe railroad grade crossings.

The only order of the Railroad Commission now before this Court is the order of July 8, 1927 (R. 119-134). This is a complete order and stands on its own feet. In important respects, this order differs from earlier orders.

The order of July 8, 1927, directs the carriers to construct a union passenger station and appurtenances. It was made in pursuance of the Commission's authority over railroad passenger equipment and service and the safety of railroad passenger operations.

It is true that a safe, adequate and satisfactory railroad passenger service requires more than an adequate building on a sufficiently large tract of land. The Supreme Court of California pointed out (*Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of the State of California,* 209 Cal. 460, 79 Cal. Dec. 457, 465, R. 184, 196) that

> "an adequate building alone will not constitute adequate passenger terminal facilities, but that *a satisfactory passenger terminal contemplates also that passenger trains may safely be directed to said terminal.*"

The Railroad Commission's order does not require the *separation of grades* along Alameda Street or any other action usually taken for the elimination of grade crossings. While the order provides (R. 133-4) that after the construction of the union passenger station the operation by the Southern Pacific of its trains on and along Alameda Street, except certain industrial freight switching service, shall cease, this is a situation which, at least as far as the passenger trains are concerned, will followed automatically from the construction of the union passenger station north of the present operations on Alameda Street, making

it unnecessary for the passenger trains any longer to operate on and along Alameda Street.

The point which we desire to emphasize is that the order now under review by this Court was made in the exercise of the Railroad Commission's authority over passenger train service, equipment and safety and not by reason of its authority over railroad grade crossings. That the result of the exercise of that power will be to solve also the highly difficult and dangerous Alameda Street situation, to the great benefit of the carriers and the city alike, is a most fortunate circumstance but, as stated, it is a result which will follow from the action taken by the Railroad Commission in the exercise of its authority over *railroad passenger service, equipment and safety.*

The Southern Pacific also urges (Joint Brief for Appellants, pp. 105-6) that the Railroad Commission should have made an express finding that the existing passenger station facilities of said company are inadequate. In reply to this contention, we invite the Court's attention to the following matters:

(1) The existing passenger terminal facilities are, in fact, inadequate, as is shown by the Record in this case and, in effect, was found by the Railroad Commission in its findings Nos. 7 and 10 (R. 119-132-3).

(2) The finding required by Section 36 of the Public Utilities Act is *not* that the existing structure is *"inadequate"* but that the "additions, extensions, repairs or improvements to, or changes

in, the existing plant, equipment, apparatus, facilities or other physical property * * * *ought reasonably to be made,* or that a new structure or structures *should be erected to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities* * * *." The Commission made these findings (Nos. 3, 4, 5, 6, 7, 10) (R. 119, 131-3).

In closing their discussion on this point, the carriers refer to *Atlantic Coast Line R. Co. v. North Carolina Corporation Commission,* 206 U. S. 1. In this case, the Corporation Commission of North Carolina had made an order directing two railroad companies to so rearrange their passenger train schedules as to restore a schedule connection at Selma. The testimony showed that compliance with the Commission's order would require the operation of an additional passenger train by one of the carriers, with a daily operating loss. This Court sustained the order of the Corporation Commission on the ground, among others, that it is the duty of carriers "to make reasonable connections with other railroads, so as to promote the convenience of the traveling public" (p. 22). We do not understand how the carriers can derive any comfort from this decision.

5. THE CONTENTIONS OF THE CARRIERS (a) THAT THE SOUTHERN PACIFIC IS BEING DIRECTED TO TAKE ACTION FOR THE PURPOSE OF PROVIDING THE SANTA FE AND THE SALT LAKE WITH ADEQUATE PASSENGER DEPOTS AND (b) THAT THE SANTA FE AND THE SALT LAKE ARE BEING DIRECTED TO TAKE ACTION FOR THE PURPOSE OF ELIMINATING THE SOUTHERN PACIFIC'S GRADE CROSSINGS ON ALAMEDA STREET ARE CONTRARY TO THE FACTS AND WITHOUT ANY MERIT.

Finally, at pages 109 to 117 of their brief, the carriers, in their points IV(a) and IV(b), claim (a) that the Southern Pacific is being directed to take action to provide the Santa Fe and the Salt Lake with a passenger depot and (b) that the Santa Fe and the Salt Lake are being directed to take action to eliminate the Southern Pacific's grade crossings along Alameda Street.

These claims are being made in the face of a record to the contrary and were found by the Supreme Court of California to be without merit.

As a matter of fact, each of the carriers is being directed to take action for the purpose of remedying *that carrier's own existing inadequacies* in passenger terminal facilities and operation and not because of the inadequacies of any other carrier.

The carriers made these same contentions before the Supreme Court of California. That Court considered the claims carefully and found that they are without merit. Referring first to the Southern Pacific's situation, the Court said (*Atchison, Topeka and Santa Fe Railway Company v. Railroad Commis-*

sion of the State of California, 209 Cal. 460, 79 Cal. Dec. 457, 464-5; R. 184, 195-6):

"The Southern Pacific Company, one of the petitioners here, contends that with relation to it the order is void because its necessary force and effect, as to said petitioner, is to require it to abandon adequate facilities and to join the other petitioners in acquiring new property which is unnecessary for a full performance of said petitioner's duties to the public. This argument is made because there has been no finding of fact made by the Railroad Commission of this state that the passenger station and facilities of the Southern Pacific Company was inadequate. There is, assuredly, an implied finding to this effect in the order of the Railroad Commission under review. The argument of the Southern Pacific Company that the evidence does not show that its passenger depot is inadequate, but, on the contrary, shows it to be adequate for some years to come, loses sight of the fact that an adequate building alone will not constitute adequate passenger terminal facilities, but that a satisfactory passenger terminal contemplates also that passenger trains may safely be directed to said terminal. The record discloses that passenger trains of the Southern Pacific Company can only reach its present passenger terminal by grade crossings along Alameda Street, which are so unsafe, impracticable and unreasonable, under all the surrounding circumstances, as to require elimination. The carriers admit the desirability of eliminating the grade crossings, and submitted a plan of their own. Both Commissions have found this plan unde-

sirable and the application of the carriers to proceed in accordance therewith was denied by the Interstate Commerce Commission. Petitioners assert that they do not object to the elimination of grade crossings, but object to the method employed for accomplishing this. Extensive hearings were had upon this general problem and expensive investigations were made by engineers and other experts and the findings of the Railroad Commission were made after full consideration and upon ample evidence."

Referring then to the Santa Fe and the Salt Lake, the court continued (79 Cal. Dec. 457, 465; R. 184, 196-7):

"It is contended by the petitioners, Atchison, Topeka and Santa Fe Railway Co. and Los Angeles and Salt Lake Railroad Co., that their property is being taken for public use without compensation and without due process of law because the necessary effect of the order under review is to require them to join in the construction of a union station, the primary purpose of which is to accomplish the removal of the tracks of the Southern Pacific Company from Alameda Street, a matter with which they are unconcerned. The Railroad Commission, on the other hand, takes a position which we think is correct, to the effect that each company is ordered to join in the erection of the union station because of its own inadequacies in terminal passenger facilities; that the proportionate expense of each has not yet been determined, and that when it is determined, it is assumed that each carrier will be required to pay

because of and in an amount proportionate to the evils in its system sought to be remedied by the new plan. It can not be assumed that in the event they fail to agree upon a segregation of the costs, the Railroad Commission will require any of the carriers to pay more than the amount necessary to furnish proper facilities to perform its duty to the public."

By way of supplement to the Court's conclusions, we submit the following matters:

a. Santa Fe.

The Santa Fe's passenger depot in Los Angeles is antiquated and wholly inadequate for present and future needs (*Los Angeles Passenger Terminal Cases*, 100 I. C. C. 421, 432, 454; *Municipal League v. Southern Pacific Company, et al.*, R. 84, 88; Exh. 1 of California Railroad Commission, pp. 90, 242-3, separately certified and forwarded, R. 7; Sachse, R. 260).

It would cost $1,182,317.00 to construct an adequate passenger terminal for the Santa Fe alone at the present site (Ball, R. 228; Exh. 3 of Santa Fe, R. 229-30).

To these facts must be added the further important fact that the Santa Fe's present site is located in a scene of danger to the public for the reason that substantially all members of the public who have occasion to use the present depot can do so only by crossing Alameda Street and the main line tracks of the Southern Pacific located thereon. The site is inconvenient and difficult of access and dangerous to the

public desiring to use it (Exh. 5 of California Railroad Commission, opposite R. 226).

Hence, the Railroad Commission's order against the Santa Fe was made for the purpose of remedying that carrier's own existing inadequacies in passenger terminal facilities and not because of the inadequacy of any other carrier's facilities.

b. Salt Lake.

The Salt Lake has no passenger depot of its own in Los Angeles and is using the Southern Pacific's Arcade Depot merely as a temporary matter, under permission of the Railroad Commission, for the reason that a fire did some damage to the Salt Lake's wooden depot formerly located east of the Los Angeles River. In order to reach the Arcade Depot, the Salt Lake operates all its passenger trains on and along Alameda Street from Butte Street on the south to the Arcade Depot on the north, at grade, across many important public streets. (Exh. 5 of California Railroad Commission, opposite R. 226).

These operations of the Salt Lake have greatly accentuated the inconvenience and danger to traffic, both vehicular and pedestrian, across said portion of Alameda Street (*Municipal League v. Southern Pacific Company, et al.*, R. 119, 128; Mott, R. 242).

If, when the Salt Lake's present temporary use of the Southern Pacific's Arcade passenger depot ceases, the Salt Lake should return to its land on the east bank of the Los Angeles River and build a separate passenger depot there, the cost of such depot and fa-

cilities would be between $750,000 and $1,000,000 (Knickerbocker, R. 279).

That the Salt Lake should take that action is almost unthinkable, but, if so, the same situation with reference to crossing the scene of danger on and along Alameda Street which exists in connection with the present passenger terminal site of the Santa Fe would be equally applicable to the Salt Lake.

It is clear that, as to the Salt Lake, also, the Railroad Commission's order was made for the purpose of remedying that carrier's own existing inadequacies in passenger terminal facilities and not because of the inadequacy of any other carrier's facilities.

c. **Southern Pacific.**

The Southern Pacific claims that there is no evidence in the record to show that its present passenger facilities are in any respect inadequate and argues that it is being directed to take action either to eliminate the dangerous grade crossing situation on and along Alameda Street or to help correct the existing passenger inadequacies of the Santa Fe and the Salt Lake. As we shall show, these contentions are without merit.

In this connection, the Southern Pacific's chief reliance is on a statement of the California Railroad Commission that the Arcade depot thereafter to be erected would be efficient and ample to provide for the probable passenger traffic of a city several times "the present size" of Los Angeles and on several statements in Exh. 1 of the California Railroad Com-

mission (Sachse Report). (Joint Brief for Appellants, pp. 109-11).

However, we invite the Court's attention to the following facts:

(1) The Railroad Commission's statement was merely a *prediction* made on November 25, 1913, prior to the erection of the Arcade building, more than 17 years ago, at a time when the population of Los Angeles was less than 400,000 (Exh. 56 of California Railroad Commission, opposite R. 302). The 1930 census shows a population of 1,238,048. In 1913, no one foresaw the enormous subsequent increase in the population of Los Angeles and the Railroad Commission is not to be chided for having "guessed wrong" (*Application of Southern Pacific Company,* Vol. 3, Opinions and Orders of Railroad Commission of California, pp. 927, 929-30).

(2) The statements relied on by the carriers in Exh. 1 of California Railroad Commission (Sachse Report) were written about 12 years ago, in 1919—the date of the Report is July 31, 1919—at a time when the population of Los Angeles was less than 600,000.

(3) The more recent testimony in the present Record shows that the Arcade station building has actually reached its capacity or that its capacity will be reached in a very short time.

Richard Sachse, former chief engineer of the California Railroad Commission, who wrote the report of 1919 relied on by the carriers, testified in 1926 (R. 260):

> "An inspection of the latter station (Southern Pacific Arcade station) any day of the year in peak traffic hours will establish the fact that it either has actually reached its capacity or that capacity will be reached in a very short time, and especially as far as the convenience of the public is concerned."

A. G. Mott, the present chief engineer of the California Railroad Commission, testified in 1926 (R. 253):

> "Frequent observation on my part indicates that there is a very definite tendency toward overcrowding the waiting room at this station between the hours of 7 and 8 P. M. just prior to the departure of such important trains as the Padre, Lark and Sunset Limited, and I am thoroughly convinced that, entirely aside from a theoretical consideration of station waiting room capacities, the present waiting room at the Arcade Station will prove to be entirely inadequate for the combined operations of the Southern Pacific and the Salt Lake for peak periods of travel within ten years. I do not see how the waiting room capacity at the Arcade Station could be increased except at a very large expense and at the sacrifice of necessary space for other incidental station facilities, such as baggage room and mail handling facilities, etc."

(4) The *site* of the Arcade Depot is narrow and its expansion would be difficult and expensive.

Expansion would require the relocation of Alameda Street with the closing or separation of grades at Fourth Street, or the elevation of station tracks — all expensive and attended by the destruction of permament buildings (*Los Angeles Passenger Terminal Cases,* 100 I. C. C. 421, 435-6; Mott, R. 253, 303; Sachse, R. 261; Hawgood, R. 273).

(5) Finally, as the California Supreme Court pointed out (*Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of the State of California,* 209 Cal. 460, 79 Cal. Dec. 457, 465, R. 184, 196), *an adequate building alone does not constitute adequate passenger facilities.* As the court said (R. 184, 196):

> *"A satisfactory passenger terminal contemplates also that passenger trains may safely be directed to said terminal."* (Emphasis supplied.)

Applying this principle to the present situation, the court continued (R. 184, 196):

> *"The record discloses that passenger trains of the Southern Pacific Company can only reach its present passenger terminal by grade crossings along Alameda Street, which are so unsafe, impracticable and unreasonable, under all the surrounding circumstances, as to require elimination."*: (Emphasis supplied.)

The failure of the Southern Pacific to meet this test of adequate, convenient and safe

> passenger terminal facilities and operations is so overwhelmingly and conclusively established as to preclude the necessity of further discussion.

We believe that it is now abundantly clear that as to the Southern Pacific, also, the Railroad Commission's order was made for the purpose of remedying the carrier's own existing inadequacies in passenger terminal facilities and operations and not because of the inadequacies of any other carrier.

d. Sharing the cost.

When it comes to the question of sharing the cost of the new union passenger terminal between the three carriers, then, as pointed out by the California Supreme Court (79 Cal. Dec. 457, 465; R. 184, 197)—

> "it is assumed that each carrier will be required to pay because of and in an amount proportionate to the evils in its system sought to be remedied by the new plan. It can not be assumed that in the event they fail to agree upon a segregation of the costs, the Railroad Commission will require any of the carriers to pay more than the amount necessary to furnish proper facilities to perform its duty to the public."

As already pointed out, specific machinery for the division of such costs by the Railroad Commission, in the event the carriers are unable to agree, has been set up by Section 36 of the Public Utilities Act.

V. Conclusion.

In conclusion, we submit, very respectfully, that the points urged by the appellants are each and all without merit and that the decision of the Supreme Court of California herein under review should be affirmed.

Dated at Los Angeles, California, this 4th day of April, 1931.

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(APPENDICES FOLLOW.)

Appendix 1.

CITATIONS OF THE VARIOUS LOS ANGELES UNION STATION DECISIONS.

1. *First Decision of California Railroad Commission* (R. 24-84; on rehearing, R. 84-96).

   Los Angeles Union Station Case—Volume 19, Opinions and Orders of the Railroad Commission of California, page 740—April 26, 1921; on rehearing, Volume 20, page 937—December 6, 1921.

2. *First Decision of Supreme Court of California* (R. 97-111).

   Atchison, Topeka & Santa Fe Ry. Co. v. Railroad Commission of California, 190 Cal. 214—December 19, 1922.

3. *First Decision of Supreme Court of United States.*

   Railroad Commission of California v. Southern Pacific Company, 264 U. S. 331—April 7, 1924.

4. *First Decision of Interstate Commerce Commission* (R. 225; Exh. No. 5 of City of Los Angeles, separately transmitted as original exhibit, R. 7).

   City of Los Angeles v. Los Angeles & Salt Lake Railroad Company, et al., (Los Angeles Passenger Terminal Cases) 100 I. C. C. 421—July 6, 1925.

5. *Second Decision of Railroad Commission of California* (R. 119-134: decision here under review).

   Los Angeles Union Station Case, Volume 30, Opinions and Orders of the Railroad Commission of California, page 151—July 8, 1927.

6. *Second Decision of Interstate Commerce Commission* (R. 135-156).

   City of Los Angeles v. Los Angeles & Salt Lake Railroad Company, et al., (Los Angeles Passenger Terminal Cases), 142 I. C. C. 489—May 8, 1928.

7. *Decision of Court of Appeals of District of Columbia.*

   United States ex rel. City of Los Angeles v. Interstate Commerce Commission, 34 Fed. (2d) 228—February 25, 1929.

8. *Second Decision of Supreme Court of the United States.*

   Interstate Commerce Commission v. United States of America, at the Relation of the City of Los Angeles, 280 U. S. 52—November 25, 1929.

9. *Second Decision of Supreme Court of California* (R. 184-198: decision from which present appeal was taken).

   Atchison, Topeka and Santa Fe Railway Company v. Railroad Commission of California, 79 Cal. Dec. 457—May 27, 1930.

Appendix 2.

FINDINGS OF FACT OF CALIFORNIA RAILROAD COMMISSION AND INTERSTATE COMMERCE COMMISSION.

"1. That the present and future public convenience and necessity permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific Company on Alameda Street from College Street to East Fifteenth Street, inclusive, in the city of Los Angeles.

"2. That neither the present nor future public convenience and necessity require or will require the construction or extension of new or existing main lines of railroad in the city of Los Angeles, as described in the Application No. 3346 and in the record adduced herein.

"3. That the present and future public convenience and necessity require and will require (a) the extension by defendants in Cases Nos. 970, 971, 972, 974, 980, 981 and 983 of their main lines of steam railroad in the city of Los Angeles, so as to reach and properly serve a union passenger station and terminal within that portion of said city bounded by Commercial Street, North Main Street, Redondo Street, Alhambra Avenue, and the Los Angeles River, which they or any of them may construct and establish in accordance with our order herein, and (b) the extension of their respective main lines so as properly to provide for the rearrangement of passenger and freight routes

incidental to the convenient and proper operation of such union passenger station and terminal.

"4. That the extensions referred to in the preceding paragraph are reasonably required in the interest of the public convenience and necessity, and that in our opinion the expense involved therein will not impair the ability of defendants to perform their respective duties to the public.

"5. That, in addition to the abandonment of service on Alameda Street as above authorized, the present and future public convenience and necessity permit the abandonment by defendants of such portions of their respective main lines of steam railroad in the city of Los Angeles, or of the operation of all or any portion of the present train service thereon, as may be incidental to the rearrangement of passenger and freight routes, of tracks, and of terminal facilities, made necessary or proper in connection with the construction and establishment by defendants, in accordance with our order herein, of a union passenger station and terminal within that portion of said city described in paragraph three (3) above.

"6. That the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defendant steam carriers in the city of Los Angeles as may be incidental, and necessary or convenient, to the proper operation of any such union passenger station as defendants or any of them, in accordance with our order herein, may construct and establish in that portion of said city

described in paragraph three (3) above, is in the public interest and is practicable, without, in our opinion, impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business.

"7. That the present and future public convenience and necessity require and will require the construction by defendants, Southern Pacific Company, The Atchison, Topeka and Santa Fe Railway Company and the Los Angeles and Salt Lake Railroad Company, and each of them, of a union passenger station within that portion of the City of Los Angeles described in paragraph three (3) above, together with such tracks, connections, and all other terminal facilities and additions, improvements or changes in the existing railroad facilities of said defendants as may be reasonably necessary, convenient or incidental to the use of said union passenger station.

"8. That, in our opinion, an adequate union passenger station can be constructed within the said described portion of said city at a cost of approximately ten millions of dollars, in substantial compliance with the plan outlined in Commission's Exhibit No. 4-b herein, which said plan is hereby found to be in all essential respects similar to that certain plan for a union passenger station in said area considered by the Interstate Commerce Commission to be in the public interest in its order and decision of July 6, 1925, in its Docket No. 14,778, to which reference has been made hereinabove.

"9. That said plan for a union passenger station in said portion of said city, in our opinion, is and would be in the public interest and that its construction is practicable, without, in our opinion, impairing the ability of these carriers to perform their respective duties to the public.

"10. That said construction ought reasonably to be made."

(NOTE: For the Railroad Commission's findings, see Volume 30, Opinions and Orders of the Railroad Commission of California, pages 151, 160-1; R. 118, 131-3.)

The first six of the foregoing findings had theretofore been made by the Interstate Commerce Commission (100 I. C. C. 421, 459-60; Exh. 5, City of Los Angeles, forwarded with the return).

The last four findings were found by the Interstate Commerce Commission to have "sufficient support in the record" (142 I. C. C. 489, 496; R. 135, 145).

The Interstate Commerce Commission also found that the plan for a station within the Plaza area is "in the public interest". See *Interstate Commerce Commission v. United States at relation of City of Los Angeles*, 280 U. S. 52, 63. This unnumbered finding or conclusion is found in 100 I. C. C. 421, 461 and was adhered to, together with all the other findings, in 142 I. C. C. 489, 496; R. 135, 145.)

Appendix 3.

CERTIFICATES ISSUED BY INTERSTATE COMMERCE COMMISSION.

"It is hereby certified, That the present and future public convenience and necessity (1) require the construction by the Los Angeles & Salt Lake Railroad Company, the Southern Pacific Company, and the Atchison, Topeka & Santa Fe Railway Company of extensions of their respective main lines of railroad in the City of Los Angeles, Calif., so as to reach and serve a union passenger station and terminal which they may construct in the Plaza district, pursuant to the order of the Railroad Commission of the State of California to that effect; (2) require the construction of the necessary extensions of their main lines, and permit the abandonment of such other portions of their main lines as may be necessary to provide for the rearrangement of passenger and freight routes incidental to the convenient and proper operation of such union passenger station and terminal; (3) permit the abandonment of operation of all passenger and freight train service, except industrial freight-switching service, on the main line of the Southern Pacific on Alameda Street from College Street to East Fifteenth Street, inclusive, in the City of Los Angeles, Calif.; and (4) require the use by any defendant steam carriers of so much of the terminal main-line track or tracks of any of the other defend-

ant steam carriers in the City of Los Angeles, Calif., as may be incidental, and necessary or convenient, to the proper operation of such union passenger station and terminal."

(NOTE: These certificates are a part of the "Certificate and Order" issued by the Interstate Commerce Commission in its second decision in the *Los Angeles Passenger Terminal Case* (142 I. C. C. 489; R. 153-4.)

Appendix 4.

SECTION 36, PUBLIC UTILITIES ACT OF CALIFORNIA.
(St. 1915, Chapter 91, pages 115, 134.)

Sec. 36. "Whenever the Commission, after a hearing had upon its own motion or upon complaint, shall find that additions, extensions, repairs or improvements to, or changes in, the existing plant, equipment, apparatus, facilities or other physical property of any public utility or of any two or more public utilities ought reasonably to be made, or that a new structure or structures should be erected, to promote the security or convenience of its employees or the public, or in any other way to secure adequate service or facilities, the commission shall make and serve an order directing that such additions, extensions, repairs, improvements or changes be made or such structure or structures be erected in the manner and within the time specified in said order. If the Commission orders the erection of a new structure, it may also fix the site thereof. If any additions, extensions, repairs, improvements or changes, or any new structure or structures which the Commission has ordered to be erected, require joint action by two or more public utilities, the Commission shall notify the said public utilities that such additions, extensions, repairs, improvements or changes or new structure or structures have been ordered and that the same shall be made at their joint cost, whereupon the said public utilities

shall have such reasonable time as the Commission may grant within which to agree upon the portion or division of cost of such additions, extensions, repairs, improvements or changes or new structure or structures, which each shall bear. If at the expiration of such time such public utilities shall fail to file with the Commission a statement that an agreement has been made for a division or apportionment of the cost or expense of such additions, extensions, repairs, improvements or changes, or new structure or structures, the Commission shall have authority, after further hearing, to make an order fixing the proportion of such cost or expense to be borne by each public utility and the manner in which the same shall be paid or secured."

SUPREME COURT OF THE UNITED STATES.

Nos. 470-472.—October Term, 1930.

The Atchison, Topeka and Santa Fe Railway Company, Appellant,
470 *vs.*
Railroad Commission of the State of California and Leon O. Whitsell, C. L. Seavey, et al., etc.

Los Angeles & Salt Lake Railroad Company, Appellant,
471 *vs.*
Railroad Commission of the State of California and Leon O. Whitsell, C. L. Seavey, et al., etc.

Southern Pacific Company and Southern Pacific Railroad Company, Appellants,
472 *vs.*
Railroad Commission of the State of California and Leon O. Whitsell, C. L. Seavey, et al., etc.

Appeals from the Supreme Court of the State of California.

[May 18, 1931.]

Mr. Chief Justice Hughes delivered the opinion of the Court.

These are appeals from judgments of the Supreme Court of California, which affirmed an order of the Railroad Commission of that State requiring the appellants to construct a union passenger station in the City of Los Angeles, together with incidental connections, extensions, improvements and terminal facilities, in substantial compliance with the plan outlined by the Commission. 209 Cal. 460.

Proceedings were begun before the State Railroad Commission in the year 1916, and in December, 1921, after two hearings, the Railway Companies were required to remove certain grade crossings and to build a union terminal within a defined area known

as the Plaza site in Los Angeles. 19 Opinions, R. R. Com., Cal. 740; 20 *id.* 937. The Supreme Court of the State held that the order was beyond the power of the Commission, because the subject matter had been committed to the Interstate Commerce Commission by the Transportation Act of 1920. 190 Cal. 214. The judgment was affirmed by this Court. 264 U. S. 331. The Court held that the relocation of tracks, which was incidental to the proposed union station, required a certificate of approval of the Interstate Commerce Commission under paragraphs 18 to 21 of section 1 of the Interstate Commerce Act, as amended by the Transportation Act of 1920 (41 Stat. 476-478), as a condition precedent to the validity of any action by the carriers or of any order by the State Railroad Commission.[1]

Pending the consideration of that case, a proceeding was instituted before the Interstate Commerce Commission by the City of Los Angeles to obtain an order requiring the three Railway Companies to build the union station at the designated place. That Commission decided, July 6, 1925 (100 I. C. C. 421), that it was without authority to require the construction of the station. But, in order to facilitate the disposition of the case, the Commission made certain hypothetical certificates substantially as follows:[2]

"(1) That the public convenience and necessity require the extensions of lines that may be necessary to reach and serve any union passenger station within the plaza which may be constructed in accordance with a lawful order of the State Commission and that may be necessary to provide for the incidental rearrangement of passenger and freight routes, and that the expense involved will not impair the carriers' ability to perform their duties to the public. (2) That public convenience and necessity permit the abandonment of train service on Alameda Street and such other abandonments of lines as would be necessary in connection with the establishment of any such station, so lawfully ordered by the State Commission. The report further found that such joint use of track or other terminal facilities as may be incidental and necessary to the proper operation of any such union station is in the public interest and is practicable, without substantially impairing the owning carriers' ability to handle their own business."

[1] See Interstate Commerce Commission *v.* United States ex rel. Los Angeles, 280 U. S. 52, 61.

[2] *Id.*, pp. 62, 63.

In reaching its conclusion, the Interstate Commerce Commission made an extended review of the question of the expense involved, stating that "if a union station were built at the Plaza under substantially the plan presented by the California commission, the new money necessary to be raised, less the value of property released from passenger service, would be about $5,500,000. The total investment in passenger facilities under the Plaza plan would approximate $9,500,000." 100 I. C. C., p. 457.

After setting forth its findings upon the record before it, the Commission reserved jurisdiction for the purpose of making such further findings and orders, and issuing such certificates, as should be warranted in the event that the plan of the State Commission as finally evolved should be materially different from that "as here considered to be in the public interest." *Id.*, p. 461.

Following this action of the Interstate Commerce Commission, the proceeding before the State Commission was reopened. The action of the Federal Commission was submitted, hearings were had at which evidence was received, and, on July 8, 1927, the State Commission made the order, which was the subject of the judgments now under review, requiring the building of the station within the Plaza area and the establishment of the connections, additions and facilities which that project involved. The State Commission found that "the present and future public convenience and necessity" required the construction of the union station, and that it could be constructed at a cost of approximately $10,000,000 in substantial compliance with the plan outlined, which was found to be in all essential respects similar to that considered by the Interstate Commerce Commission in its order above mentioned. 30 Opinions, R. R. Com., Cal. 151.

Petitions for final order were then presented by the City of Los Angeles and the State Commission to the Interstate Commerce Commission. After further hearing the latter Commission made its report, on May 8, 1928, adhering to the conclusions of its former report that "public convenience and necessity" required the extension by the Railway Companies of their respective main lines in the City of Los Angeles "so as to reach and serve a union passenger station and terminal which they may construct in the Plaza district," pursuant to order of the State Commission to that effect, with "the abandonment of other portions of main lines to

provide for incidental rearrangement of routes, and the abandonment of train service on Alameda Street", and that "such joint use is in the public interest and practicable, without impairing the ability of the carrier or carriers owning or entitled to the enjoyment of such track or tracks to handle its or their own business." The Interstate Commerce Commission issued its certificate accordingly, but the petition for the issue of an order requiring the Railway Companies to construct a union station was denied. 142 I. C. C. 489.

Application was then made to the Supreme Court of the District of Columbia for a writ of mandamus to compel the Interstate Commerce Commission to consider the evidence introduced before it for the purpose of determining whether the Commission should order the Railway Companies to build the union station, and, after consideration of the evidence, to make such an order as the facts required. Dismissal of that petition was reversed by the Court of Appeals of the District of Columbia, and, upon writ of certiorari, this Court reversed the judgment of the Court of Appeals. This Court held that the Congress had not conferred upon the Interstate Commerce Commission authority to require the building of the station. 280 U. S. 52.

Referring to its former decision, the Court said (*id.*, p. 71): "The only issue there presented to this Court, was whether it was necessary to secure from the Interstate Commerce Commission its approval of the construction of a union station and the relocation of the connecting tracks proposed. The point in that case was the necessity for the acquiescence by the Interstate Commerce Commission in respect to a union passenger station. We held such a certificate to be necessary before a union station or connecting lines of interstate carriers could be lawful. That is all we held."

Thereupon, the Railway Companies petitioned the Supreme Court of the State to review the order of the State Commission requiring the construction of the station, and that court entered the judgments of affirmance from which these appeals have been taken.

The questions presented are solely those of constitutional authority. All questions of fact as to public convenience and necessity, and as to the practicability of the proposed plan, have been resolved against the Railway Companies by the proper tribunals. This Court has held that the State Commission could not require the construction of the proposed station, and the relocation of con-

necting tracks, without the approval of the Interstate Commerce Commission. That approval has been given. This Court has also decided that the Interstate Commerce Commission has not been empowered to require the building of the station. That Commission has not attempted to exercise any such authority. The question now is as to the authority of the State Commission, in view of the action of the Federal Commission, to require the construction of the station with the incidental arrangement of tracks and facilities. The decision of the State court is conclusive so far as the constitution and laws of the State are concerned. The State Commission has acted within the power conferred upon it. The only questions before us are those arising under the Federal Constitution and the Interstate Commerce Act.

First. The Railway Companies contend that the order of the State Commission is repugnant to the commerce clause and is in conflict with the powers vested by the Congress in the Interstate Commerce Commission. The argument is that as to union terminal facilities, joint use of tracks and abandonment of lines, the Congress has occupied the field and that state authority has been abrogated. *Northern Pacific Railway Company* v. *Washington*, 222 U. S. 370; *Pennsylvania Railroad Company* v. *Public Service Commission*, 250 U. S. 566; *Colorado* v. *United States*, 271 U. S. 153; *Alabama & Vicksburg Railway Company* v. *Jackson & Eastern Railway Company*, 271 U. S. 244; *Missouri Pacific Railroad Company* v. *Porter*, 273 U. S. 341. The contention presupposes that state authority could be exerted were it not for the provisions of the Federal legislation. That is, that it was the intention of Congress to prevent the exercise of state power in this matter of serious public interest, although no authority was given to the Federal Commission to meet the public need. Such an intention to override existing state authority to deal with local exigencies is not to be imputed to the Congress unless its enactment compels that conclusion. In deciding that the Congress had given to the Interstate Commerce Commission no power to require the building of such a union terminal as that projected in this case, this Court adverted to the extent of the authority that would be involved and the effect of its exercise upon local interests. The Court said (280 U. S. pp. 68, 69):

"Such authority, if conferred in Los Angeles, would have application to all interstate railroad junctions, including the numerous large cities of the country, with their residential, commercial, shopping, and municipal centers now fixed and established with relation to existing terminals. It would become a statute of the widest effect and would enter into the welfare of every part of the country. Various interests would be vitally affected by the substitution of a union station for the present terminals. A selection of its site from the standpoint of a city might greatly affect property values and likewise local transportation systems. The exercise of such power would compel the carriers to abandon existing terminals, to acquire new land and rights of way and enter upon new construction, to abandon large tracts and to sell territory of the same extent as no longer necessary for the use of the carriers.

"There would have to be tribunals to apportion the expenditures and cost as between the carriers. A proper statute would seem to require detailed directions, and we should expect the intention to be manifested in plain terms and not to have been left to be implied from varied regulatory provisions of uncertain scope. It would be a monumental work and one requiring the most extensive exercise of expert engineering and railroad construction. It would make possible great changes of much importance in the plans of every city and in the rearrangement and mutations of railroad property and public and private business structures everywhere. We find no statutory preparation for the organization of such machinery."

The considerations which led the Court to the conclusion that the power to compel the construction of such terminals had been withheld from the Federal Commission also make it clear that the authority which resided in the State had not been taken away except to the extent that the approval of the Federal Commission was required. The principle thus applicable has been frequently stated. It is that the Congress may circumscribe its regulation and occupy a limited field, and that the intention to supersede the exercise by the State of its authority as to matters not covered by the Federal legislation is not to be implied unless the Act of Congress fairly interpreted is in conflict with the law of the State. *Savage* v. *Jones*, 225 U. S. 501, 533; *Atlantic Coast Line Railroad* v. *Georgia*, 234 U. S. 280, 293, 294; *Southern Railway Company* v. *Railroad Commission*, 236 U. S. 439, 446; *Illinois Central Railroad Company* v. *Public Utilities Commission*, 245 U. S. 493, 510; *Carey* v. *South Dakota*, 250 U. S. 118, 122; *Lehigh Valley Rail-*

road Company v. *Public Utility Commissioners,* 278 U. S. 24, 35; *International Shoe Company* v. *Pinkus,* 278 U. S. 261, 265. We find no such conflict in this case, as the approval of the Interstate Commerce Commission has been obtained, and its certificate of public convenience and necessity has been issued, in relation to the rearrangement, extensions and abandonment of tracks, and the use of the terminal facilities, involved in the proposed plan, and nothing further was required by the Interstate Commerce Act.

Second. The appellants further insist that the certificates of the Interstate Commerce Commission are void. The point is that the certificates were not issued upon the application of the Railway Companies but in proceedings adverse to them and over their protest. It is urged that paragraphs 18 to 20 of section 1 of the Interstate Commerce Act give the Commission no power to issue such certificates except upon application of the carriers, and that the certificates were also unauthorized under paragraph 21 of that section.

The provisions of these paragraphs (18 to 21) contain no such limitation as that suggested. While they relate "to the construction, acquisition, extension and abandonment of a railroad", and "deal primarily with rights sought to be exercised by the carrier" (*Cleveland, Cincinnati, Chicago & St. Louis Railway Company* v. *United States,* 275 U. S. 404, 408) these paragraphs do not exclude appropriate action by the Commission upon applications by those who have a proper interest in the subject matter, although they are not carriers. If the State could be deemed to have no authority to compel the building of such a union terminal as that here involved, the question would not arise. But if the State originally had this authority, and the Federal legislation has not superseded it, but has required, as this Court has held, a certificate of public convenience and necessity from the Interstate Commerce Commission as a condition precedent to the validity of any order on the part of the State Commission, we find no warrant for construing the statute as precluding the application which is necessary to obtain such a certificate. In its first opinion, this Court said that it was advised that the City of Los Angeles had filed a petition with the Interstate Commerce Commission and that the court thought that the course taken by the City "was the correct one". 264 U. S. pp. 347, 348. While the statement was *obiter,* it inti-

mated an opinion which has been confirmed by further consideration of the purpose and terms of the statute. Nothing was said in the second opinion contrary to that view. The approval of the Interstate Commerce Commission and the issue of its certificate of public convenience and necessity being indispensable under the Act, application could properly be made by the authorities of the State, assuming that with such certificate they were entitled to require the establishment of the station.

Third. We are thus brought to the contention of the appellants that the order of the State Commission deprives the Railway Companies of their property without due process of law, and denies to them the equal protection of the laws, in violation of the Fourteenth Amendment of the Federal Constitution.

The principle that the State, directly or through an authorized commission, may require railroad companies to provide reasonably adequate and suitable facilities for the convenience of the communities served by them, has frequently been applied. *Wisconsin, Minnesota & Pacific Railroad Company* v. *Jacobson,* 179 U. S. 287, 296, 301; *Atlantic Coast Line Railroad Company* v. *North Carolina Corporation Commission,* 206 U. S. 1, 26, 27; *Missouri Pacific Railway Company* v. *Kansas,* 216 U. S. 262, 279; *Seaboard Air Line Railway Company* v. *Railroad Commission,* 240 U. S. 324, 327; *Mississippi Railroad Commission* v. *Mobile & Ohio Railroad Company,* 244 U. S. 388, 390, 391; *Erie Railroad Company* v. *Public Utility Commissioners,* 254 U. S. 394, 409, 410. Railroad carriers may be compelled by state legislation to establish stations at proper places for the convenience of their patrons.[3] *Minneapolis & St. Louis Railroad Company* v. *Minnesota,* 193 U. S.

[3]In its second opinion in relation to the present controversy, this Court cited the state court decisions with respect to requirements for the building of union stations, as follows (280 U. S., pp. 67, 68): "There are cases in the state courts in which by virtue of statutory provision railroads are required expressly to unite in a passenger station, if determined by Commissioners appointed by the Court or by a Railroad Commission. Mayor and Aldermen of Worcester v. Norwich & Worcester R. Co., 109 Mass. 103, 113; Railroad Commission v. Alabama Northern R. Co., 182 Ala. 357; Railroad Commission v. Alabama Great Southern R. Co., 185 Ala. 354, 362; Missouri, O. & G. R. Co. v. State, 29 Okla. 640; Chicago, R. I. & P. R. Co. v. State, 90 Okla. 173; State v. St. Louis Southwestern R. Co. (Tex. Civ. App.), 165 S. W. 491, 199 S. W. 829, 930.

53, 63. They may be required at their own expense to construct bridges or viaducts whenever the elimination of grade crossings may reasonably be insisted upon, whether constructed before or after the building of the railroads. *Missouri, Kansas & Texas Railway Company* v. *Oklahoma*, 271 U. S. 303, 307. But the power to regulate is not unlimited. "It may not unnecessarily or arbitrarily trammel or interfere with the operation and conduct of railroad properties and business". *Norfolk & Western Railway Company* v. *Public Service Commission*, 265 U. S. 70, 74; *Mississippi Railroad Commission* v. *Mobile & Ohio Railroad Company, supra.* The question in each case is whether, in the light of the facts disclosed, the regulation is essentially an unreasonable one. *Wisconsin, Minnesota & Pacific Railroad Company* v. *Jacobson, supra; Norfolk & Western Railway Company* v. *Public Service Commission, supra.* And "the matter of expense is an important criterion to be taken into view in determining the reasonableness of the order." *Oregon Railroad & Navigation Company* v. *Fairchild*, 224 U. S. 510, 529.

In the present case, careful inquiry has been made into all the relevant facts. There have been three hearings before the State Commission and two hearings before the Interstate Commerce Commission. The inadequacy of existing facilities has been shown and the relative merits of various plans have been the subject of elaborate study. The expense involved in the plan adopted, when considered in relation to the importance of the interests affected and to be served, does not appear to be so large as to warrant the condemnation of the plan as unreasonable and beyond the authority of the State. In its second report, pursuant to which the certificate of public convenience and necessity was issued, the Interstate Commerce Commission said (142 I. C. C., 495, 496):

"It will be observed that our findings of fact in the original report, previously set out, are in effect duplicated by findings numbered 1 to 6 of the Railroad Commission of the State of California in its decision of July 8, 1927, as appears in Appendix 1 hereto. The State commission in addition found (7) that the present and future public convenience and necessity require and will require the construction by defendants and each of them of a union passenger station within that portion of Los Angeles described in the third finding, with the track and other facilities reasonably necessary, convenient, or incidental to the use of such passenger station; (8) that in its opinion an adequate union passenger station could be constructed within the described portion of the city

at a cost of approximately $10,000,000, in substantial compliance with the plan outlined in its Exhibit 4-B, which is found to be in all essential respects similar to the plan considered by us in our original decision and report; (9) that such plan for a union passenger station in the Plaza portion of Los Angeles in the opinion of the State commission is and would be in the public interest, and that its construction is practicable, without impairing the ability of the defendants to perform their respective duties to the public; and (10) that such construction ought reasonably to be made. . . . All of the testimony of record in the original proceeding before us was examined and given careful analysis in our original report. We adhere to the conclusions there expressed, upon a further consideration of the whole record, including the subsequently imported testimony taken before the California commission. In our judgment, the findings of the California commission numbered 7 to 10, inclusive, as appears in the appendix and as above summarized, find sufficient support in the record."

We find no basis for the conclusion that the findings of fact are unsupported by evidence, or that, in view of the facts thus ascertained, the order of the State Commission is unreasonable or arbitrary.

In this view, the judgments of the Supreme Court of the State are affirmed.

Judgments affirmed.

Mr. Justice McReynolds is of opinion that the judgment of the court below should be reversed upon the ground that the assailed order of the Railroad Commission is arbitrary, unreasonable, and beyond any power which the State is competent to confer.

A true copy.

Test:

Clerk, Supreme Court, U. S.